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## PRESIDENTIAL ADDRESS

THIRD ANNUAL MEETING OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION


ALBERT SHAW


*Mr. Chairman, and Fellow Members of the American Political Science Association, Ladies and Gentlemen:*

Our allied associations hold their annual meetings this year under conditions that justify their existence and their work so completely that it would waste both time and effort to use a single moment for apology or explanation. Most of us belong to several or to all of these bodies of thoughtful men and women engaged in the study of human society in its more public aspects and relations. I have had the benefit of membership in the Historical and Economic Associations from the very day of their organization more than twenty years ago. It has been most encouraging through these years to note the wonderful expansion of study in the fields of history and economics, especially under the guidance of our universities and colleges.

In his presidential address two years ago, Professor Goodnow set forth the reasons for the formation of


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the Political Science Association. His presentation was sound in philosophy and strong in its outlines of the field to be cultivated by this new society. A further reason of a highly practical sort that Professor Goodnow might have stated lies in the emergence upon this field of study and action of a body of trained and competent men like Professor Goodnow himself, who are primarily political scientists rather than historians or economists. The logical differentiation of the subject-matter is one thing, and the appearance of a group of men dealing by preference with that material is something quite different. With us in the United States this development of a trained body of political scientists is a comparatively recent fact.

It is true enough that our colleagues of the Historical Association and our brethren of the Economic and Sociological groups are also political scientists in the very nature of the conditions under which they are now living in this American republic, but there are ample grounds of advantage and convenience in meeting sometimes in a distinct and restricted capacity. Thus Mr. Gladstone, working at one desk, was a theologian; sitting at another desk, he was a classical scholar; and at still another desk, a financier and political economist.

Our Political Science Association has entered upon the publication of a quarterly review. Let him who would appreciate the scope of our interest read the opening number of this new periodical, and find both in its major articles and its minor notes and comments what a wealth of current topics belongs to our membership in its political science character that it could not well deal with at the historian's table or in the alcove of the economist. There is a broad field of international life and relationship that

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comes within the purview of this Association; there is great usefulness and opportunity in the study of comparative legislation as well as that of internationalism as expressed through diplomacy.

Besides the vast field of study and work for the political scientists that the law-making activity of government affords, we have always with us the tasks and problems of scientific administration; that is to say, the carrying out of the purposes and intents of existing laws for the attainment of the best possible results.

It will be remembered that Professor Goodnow in his address two years ago laid special stress upon this phase of the science of political life in view of his own concern with administrative law. It is highly interesting, therefore, at this point, to mention the fact that the Executive Council of the Association has determined to ask the organization to sanction a special and important inquiry to be made within that field. With all the newer activities of government there is no diminution of the responsibility of those placed in authority for the fulfillment of the more ancient tasks. The maintenance of law and order through proper exercise of the police power remains after all a function of government that does not lose anything, even in relative importance, as other public activities multiply around it. It is fundamental and necessary. As our social life becomes more complicated with the growth of population, the increase in wealth, and the many new phases of human activity, the exercise of the police power grows ever more vital, as it also grows more delicate and difficult.

Yet here we have a subject of great concern that has been, comparatively speaking, neglected by those fitted to give it calm and thorough consideration. One munici-

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pality after another—face to face with inefficiency and scandal in the police administration—tries the first remedy that seems to fit the exigencies of the moment. Some communities throw upon the ordinary police force an astounding initiative in the administration of laws relating to the manners and morals of the community, in addition to a full responsibility for protecting peaceable citizens against crimes of violence and maintaining ordinary conditions of public safety. There is no uniformity of motive or of standard in our American police administration. We have a dozen different theories as to the status and tenure of the ordinary patrolman, and fifty different practices as regards the higher control of the uniformed body. For the greater part of our country, the population lives under rural rather than urban conditions, and in many States the lack of a system of rural police is more responsible than any other thing for abhorrent crime on the one hand, and for the equally abhorrent practice of lynch law on the other hand. We have much to learn from a study and comparison of police administration throughout the United States. We have also a vast deal to learn from the organization and work of the police in Great Britain, France, Germany, Austria-Hungary, Italy and other countries.

This organization of ours is not partisan, or sectional, or propagandist in its nature. It is, nevertheless, made up of men who are both willing and eager to see the results of their scientific study of political life and conditions converted to the practical ends of statesmanship. Accordingly it is hoped by the men whom you have appointed to serve on your Executive Council that this Association may from time to time procure from public-spirited citizens the funds needful for the careful and exhaustive study of some

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great subject in political science, with a view to the orderly presentation of facts and the formulating of conclusions that will be of practical benefit to the perplexed legislator in the time of his need. In this fashion the National Municipal League has been of great service to American cities in its provision of the outlines of a model charter, and in its work in the field of uniform municipal accounting.

A series of inquiries ably conducted under the auspices of this Association, carried on with diligence and energy, both without bias and in the purely scientific spirit, might come to have an almost monumental character and importance. Suggestions for such inquiries will occur from time to time, and I shall carefully avoid any endeavor to commit the Association to subjects further than the one now maturely recommended by the Executive Council. But I believe that there will be a very general agreement that this Association can render an extremely useful service to the country, without departing in the smallest degree from its scientific methods of work, by authorizing from time to time some special inquiry to be undertaken and followed by a systematic report for the public benefit.

This leads me to certain further observations with regard to the membership of this Association, rather than the Association itself. We find ourselves living in a time of intense activity in political fields. The economic life is undoubtedly the dominant concern of our modern populations. But everywhere there is evident a powerful determination to make use of the State, that is to say, of governmental power and agency, for the control or for the modification of tendencies in the economic life. Invention and capital are moving forward as never before in their magnificent mission of wealth production. The

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altruist and the captain of labor are at work as never before for the better distribution of the results of wealth production, for the maintenance of decent standards of living, the increase in the margin of leisure, the emancipation of childhood, the refinement and ennobling of women, the spread of education—the maintenance of an intelligent democracy as the basis of our political life.

Almost innumerable are the problems that present themselves as the State endeavors, through law and through administration, to fix the conditions under which economic forces shall have their play without disturbing a reasonable freedom of economic action. The political phases of this business require great study and caution. What shall be the rules of the game? The rude play of *laissez faire* principles, the undisturbed working of the law of supply and demand, the natural trend of the iron law of wages, the operation of the law of population regardless of bacteriologists and health boards—all these principles and forces of the economic life would better meet and clash and find their own conclusions than come under ill-considered or paralyzing control at the hands of doctrinaire and fanatical law-makers and administrators. Better no rules of the game than very bad ones. But for better or for worse, the political powers have been invoked to regulate economic forces.

Our democracy in the main is open-minded. The political scientist must lose no chance to influence the statesman on the one hand, and to supply intellectual pabulum to the people on the other hand. There has been enormous fresh production of wealth in recent years, but there is not nearly enough wealth as yet to make everybody reasonably and suitably well-off. Consequently, it follows that the political economist and soci-

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ologist must join with the political scientist to insist that government in its dealing with economic forces shall take care not to discourage wealth production. On the contrary, government may justly do a vast number of things to help the people increase the sum total of the annual social income.

It is through some perception of this principle that our National and State governments are encouraging agriculture, to the end that the chief industry of the country may yield more bountifully every year. The administration of the public domain has kept in mind more or less intelligently this principle of promoting the sum total of the wealth production of the country. The government's policy as touching such subjects as money, currency, and banking, as respects patents and copyrights, and a great number of other matters of economic concern, has made for the protection and encouragement of productive effort. The general liberality of American policy in the matter of joint stock corporations has unquestionably made it feasible for capital to concentrate and to apply itself with advantage to manufacturing and other forms of industry.

We have been passing through a period of immense industrial prosperity, and it still remains with us. It would be a great calamity to adopt any governmental policy or set of policies, in whatever spirit of justice, and with whatever motive of social righteousness, that should so operate as to put a sudden and severe check upon this state of industrial prosperity. I am well aware that this dictum of mine may be misunderstood and may be controverted. But I hold to my proposition that we need in this country a much larger annual maximum of wealth production than we have as yet attained, and that general prosperity and bountiful production, even with abuses in

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the unrestrained play of economic energy, are better guaranties for an approximately fair distribution of benefits than are public policies of a restraining sort that might operate to check production, while intended to bring about a more ethical distribution.

The railroad must be built; the water power must be developed; the mine must be exploited; the mill must be operated at full capacity—or the people must go hungry and ill-clad, while the school remains a cabin and its teacher is ill-paid and unfit.

This Association is not partisan, is not a body of reformers, is concerned with no propaganda; it could therefore study with absolute calmness and impartiality the question how steamship subsidies really work in other countries. It could study general or particular phases of the tariff question with complacence and serenity. It could study the national ownership of railroads, or the principles and practices of rate regulation. Above all, it can help to bring to a hundred questions now under discussion in the affairs of the nation, of the States, or of the municipalities the spirit of calmness, of inquiry, of reasonable discussion—in short, the scientific spirit. In order that the scientific spirit may prevail in our public life, there must be an intelligent citizenship, and for that reason the political scientist must always and everywhere insist upon it that education in the right kind and degree is the foremost concern of a democratic state. Let education stand first, in logic and in practical statesmanship. The political scientist may next concern himself with every phase of the machinery of the political life, whether legal or extra-legal. And he may equally concern himself with the policies of legislation and statesmanship, and with the methods of administration.

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Fellow members of the Political Science Association, I beg to congratulate you upon the work you have personally been doing in the field of political science. You have now a membership of nearly four hundred. Many of you are engaged in university teaching, and you have sent out into the country hundreds of young men who are already giving a good account of themselves in our public life. You have written and published books which, brought together, would make a collection of several thousand volumes, dealing with general or special subjects in the field of political science; and these books have had a wide influence upon political thought and upon the course of public action. Further than that, your point of view has not been merely that of detached scientific observers, but, in addition to your work as investigators, teachers and writers, you have all of you participated in a direct and valuable personal way in the work of practical public life. Some of you have served on charter commissions and helped reconstruct the machinery of city government. Some have helped to draft improved ballot laws, some have given effective advice in reforming methods of public taxation. An ever-increasing number of the members of this Association, or of the young men who have come under their teaching and influence, have been drawn into occasional or permanent participation in the actual work of making the laws or shaping the policies of the country, or else in the work of perfecting the administration of government. Nobody cares any longer whether members of an association like this are classed as republicans or democrats; protectionists, or free traders; nationalists, or states' rights men; socialists, or individualists; municipal traders, or anti-public-ownership men; for corporations, or against them; for or against trades-unionism.

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There is a general conviction that scientific students like those who unite in the carrying on of organizations like this, have a large common stock of sincerity and of intelligence, and a habit of mind which checks controversial attitudes and faddish enthusiasms, where questions of clear fact and of scientific bearing are essentially involved. For that reason our students of political science are obtaining an ever-increasing influence as a moderating and mediating element in the processes of our political life.

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# THE THIRD INTERNATIONAL CONFERENCE OF AMERICAN STATES

PAUL S. REINSCH

*Member of the American Delegation*

The Third International Conference of American States, which was held in Rio de Janeiro in July and August, 1906, differed in some important respects from the two conferences which had preceded it. While it was left to the conferences of Washington and of Mexico City to arrange their own programs and to determine upon their rules and regulations, and while no limit was set to the length of their sessions, all these matters had, in the case of the last conference, been settled beforehand by arrangement of the diplomats representing the American States in Washington who constitute the council of the Bureau of American Republics. A complete program had been worked out, containing all the subjects upon which joint action was considered desirable. A set of rules and regulations also had been adopted and the length of the session had been fixed not to exceed six weeks. The conference when it convened was, therefore, saved all the trouble and loss of time which a discussion of these matters would have made necessary had they been left to the conference itself. As a matter of fact the discussion of these preliminary matters consumed several months at both the conferences of Washington and of Mexico.

The conference was further distinguished from its predecessors by a feeling general among those who caused it to convene as well as among those who composed its mem-

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bership, that it would not be advisable upon such an occasion to inaugurate sweeping policies or to attempt radical changes. The action of former conferences had been more ambitious. Broad resolutions and long drafts of treaties had been adopted by these conferences, but the various governments had given only moderate attention to these recommendations, so that most of them were not followed by authoritative action. The ambitious plans for an all-American customs union, as is well known, were abandoned at an early date during the first conference. The third conference confined itself rather to structural changes and to administrative arrangements, as well as to the improvement of conventions already existing.

Let us briefly pass in review the work accomplished at Rio. The political part of the program contained the thorny problems of international arbitration and the collection of debts by force. The arbitration convention for the settlement of pecuniary claims, worked out by the Mexico conference, had meanwhile been approved by several of the American governments. The conference extended the period provided for the ratification of this treaty until December, 1912. The general arbitration resolution offered greater difficulty. Some of the smaller South American States, like Peru and Bolivia, which believe that they have been injured by their stronger neighbors, have always demanded an arrangement for compulsory arbitration. In this they were supported on general principles by the government of Argentina. On the other hand, States like Chile and Brazil absolutely opposed the passage of a compulsory arbitration resolution because of the existence of certain differences which they considered of vital importance to their national life to keep outside of the field of arbitration. The fact that

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the Latin-American republics have been invited to the second Hague conference furnished a method of solving this difficulty. The Rio conference merely passed a general resolution recommending that the delegates to the next Hague conference be instructed "to secure the acceptance of a general arbitration convention so effective and definite that, meriting the approval of the civilized world, it shall be accepted and put in force by every nation."

The matter of the collection of debts by force of arms was disposed of in a similar manner. Argentina, whose government had recently re-stated the principle that force should not be used in the collection of pecuniary claims, was especially anxious to have the conference pass a resolution endorsing this principle as a part of general international law. But while the governments of the United States and of other creditor nations have generally abstained from diplomatic pressure in such cases, it was nevertheless considered unwise to pass a resolution of this kind at the conference where chiefly debtor nations were represented. The conference, therefore, carefully abstained from giving any endorsement to this principle but simply recommended to the governments represented that they consider the advisability of inviting the second peace conference at the Hague "to consider the question of the forcible collection of public debts and the best means tending to diminish conflicts which have their origin in pecuniary claims." It will thus be seen that the conference did not take the step of even advising the governments to instruct their delegates to bring up this matter at the Hague conference; in fact, it simply referred the matter back to the individual governments to act upon it at their own discretion. The statement currently reported in the press that the so-called "Drago Doc-

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trine" had been endorsed by the conference is therefore absolutely unfounded.

The foregoing broad political questions contain the matter upon which differences of opinion and controversies might most readily be expected. That they were disposed of to the satisfaction of the great majority of the delegates, though disposed of in a manner that could not of course be considered final, indicates the spirit of accommodation and forbearance that characterized the conference. The location of the next conference also became a question of considerable importance during the course of the session. The Argentine government had invited the conference to meet at Buenos Ayres in 1910, but the delegates of Chile and Brazil led the opposition to fixing any date or place of meeting at this time, and the matter was finally left to the governing board of the Bureau of American Republics.

The second important matter that occupied the attention of the conference was the reorganization of the Bureau of American Republics. The Mexico conference had passed a resolution calling for the construction of a separate building to be used by the Bureau. The funds being now available, this construction is soon to be undertaken. This fact led to a general consideration of the organization and functions of the Bureau. It was felt that the purely commercial functions which the Bureau has hitherto exercised were too narrow and that this organ of the International Union of the American States might be made far more effective in carrying out the resolutions of the international conferences. It was felt that the latter would in the past have received more attention and would have been acted on in more cases, had there existed a bureau or office charged with again and again bringing

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to the attention of the various governments the advisability of adopting the recommendations or ratifying the conventions. The most important part of the reorganization plan was therefore to constitute the Bureau virtually the executive organ of the international conference. The Bureau was instructed to compile and digest all information regarding the treaties and conventions between the American republics and to assist in securing the ratification of resolutions and conventions adopted by the international American conferences. It is also to prepare complete reports upon problems specially committed to it by any conference, which are to be subjects of discussion and action in subsequent conferences. The lack of such preparation was felt very strongly at the present conference. The absence of sufficient data made definite action on many matters contained in the program entirely impossible, while the time of the conference was too short for its members to gather such necessary information while it was in session. The Bureau of American Republics was also assigned the duty of furnishing to any person interested, information concerning educational facilities in any of the American countries. The growing educational relations between the various American countries attracted the attention of the conference, and it was believed that this movement of students and teachers contains in it the promise of far closer relations between the American States. It was, therefore, thought advisable that the Bureau of American Republics should be constituted an office of information which can act as a mediator in fostering this important movement.

Another very important structural innovation is contained in the resolution calling upon the American governments to appoint each in its own country a permanent

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commission on Pan-American affairs. These commissions are to act as a nucleus for Pan-American interests in their own country and are to assist the Bureau of American Republics in carrying out the duties laid upon it under the new arrangement. These structural changes introduced by the third conference, if carried out with intelligence and energy, will be very powerful in rendering the union of American republics permanently efficient. The principal defect of the organization, heretofore, was the lack of connection between the individual conferences, and the absence of any office or commission in the individual States which was specially charged with and interested in, the carrying out of the resolutions of the conferences and the fostering of Pan-American relations. With preparatory studies resting upon the broad basis of information gained from the various commissions throughout America, the conferences in the future will be able to rear their work upon a solid foundation. The resolutions passed by them will not be allowed to fall into immediate neglect but care will be taken to keep them before the various governments and to impress upon the latter the advisability of joint action on many important matters.

Structural changes and innovations were also involved in some of the other questions on the program. The Mexico convention on patents, trade-marks and copyrights was reaffirmed and there were established in connection with it two international bureaus, one to be located in Havana, the other in Rio de Janeiro, for the registration of patents, trade-marks and copyrights. The conference further passed a resolution providing for an American center of sanitary information, in the city of Montevideo. This center is to be in close touch with the sanitary commissions of the various countries; it is to col-

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lect and compare the experience of all these bodies; and is to be ready to assist with its advice any of the commissions or local sanitary bodies which may call upon it.

By resolution the conference provided for a commission on public and private international law which is to have its seat at Rio de Janeiro. This commission is to study, define and formulate those principles of international action about which the American States in their practice are substantially agreed. The commission is also to be empowered to consider other parts of private and public international law with the purpose of arriving at principles upon which the various governments may in future be brought to agreement. No complete codification of the international law is at the present time intended, nor is it felt that a commission of this kind could well undertake such a task, but it is considered of great importance that there should be created a definite American opinion on questions of international law for the guidance of its own governments and eventually for the purpose of influencing the action of all civilized powers.

Considerable importance naturally attaches to the deliberations of the conference upon questions affecting international commerce. Here, too, a new organ was created, namely, a special section on commerce, customs and statistics in the Bureau of American Republics. This section is to be under the direction of an expert, among whose specified duties there is the collection of information upon the customs and consular laws and regulations of the various American States. The simplification and uniformity of the rules of customs administration is an end much to be desired for the encouragement of commerce. The expert is instructed to make a special report upon these matters to the next Pan-American conference.

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The passage of resolutions on the general subject of the conclusion of commercial treaties was not favored by the majority of the committee on commerce. The matters which were considered by this committee, in addition to the creation of the special section already mentioned, and which were formulated as resolutions and passed by the conference were as follows: First, a plan, presented by the Chilian delegation, for the fostering of a more efficient merchant marine service between the countries of America, which plan originally comprised the following elements: The American republics were to require that any navigation company desiring to enjoy the benefits of the system should submit its time tables, sailing lists, and rate schedules to the control of some agency like the Bureau of American Republics; that, in return for granting reasonable rates and giving good service, the companies were to receive favorable treatment in the various American countries; they were, for instance, to be free from certain restrictions under the customs regulations with respect to the entry of vessels and goods, and they were also to be granted certain reductions in harbor dues and other navigation charges. Many evident difficulties in the way of this scheme presented themselves. Harbor dues and local charges are often not under the control of the central government, they are in fact frequently pledged as security for some indebtedness; the matter of controlling the rates of international transportation is moreover one of extreme difficulty and complexity. The conference did not, therefore, endorse any final policy on this matter, but instructed the Bureau of American Republics to make a complete investigation of the subject and suggest the basis upon which contracts with navigation companies for rapid and frequent communication at reasonable rates might be concluded.

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Secondly, the conference passed a resolution for the purpose of fostering the development of the internal resources of the American republics. The Bureau of American Republics is charged to make a special investigation of the conditions of internal improvements and of the laws governing land, mining and forest concessions in the various American States; it is to present to the next international conference a memorial upon the laws and administrative practices relating to these matters. The purpose of this resolution was to broaden the scope of the work of the Bureau of American Republics and to make the latter an efficient agent in assisting in the internal development of the American republics. Most of these are in need of both capital and immigrants and by the diffusion of correct information concerning industrial conditions, a valuable service may be rendered. The conference also adopted a resolution recommending the calling of a conference to take some action in order to meet the crisis in the coffee trade, as well as a resolution instructing the Bureau of American Republics to make an investigation of the recent fluctuations of exchange in the Latin American States.

The above outline of the work of the third conference will show that in as far as its work did not modify structural arrangements, it was mainly suggestive, calling attention to new lines of international activity, to new possibilities of development, and charging the Bureau of American Republics to make preliminary investigations.

None of the delegations represented at Rio pressed upon the others a positive or ambitious program. They were mutually receptive and all seemed to recognize that the function of the conference was, not to force any policy of a majority upon the non-concurrent mem-

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bers, but, by impartial discussion, to arrive at a basis of action upon which unanimity would be possible. The actual debates and discussions of the conference were therefore carried on entirely in committee. All differences of opinion were settled there and the conference received from its committees reports carrying the unanimous endorsement of their members, which in turn were unanimously adopted by the conference itself. In this respect the conference differed most radically from its predecessors, in both of which long and earnest debates took place on the floor of the conference. This time, the discussions on the floor were of a purely formal nature. During the earlier part of the conference, resolutions thanking the Presidents of the United States and of Mexico for their successful intervention in the Central American disturbances called forth a number of congratulatory addresses. Thereupon commemorative remarks upon men recently deceased who had been prominently associated with Pan-American interests, engaged the attention of the conference. The coming of Mr. Root brought many festivities as well as the formal session at which he delivered his notable speech outlining the relations of the American States to each other. The expressions of condolence for Chile on occasion of the earthquake of Valparaiso took up a session toward the end of the conference. The larger number of resolutions were passed on the last workday of the sessions. Though, under the rules, the conference was to be in secret session, representatives of the press and other visitors were freely admitted by common consent; but as all the real business of the conference was done in committee the spirit of the rules was adhered to after all.

After this brief review of the work of the third confer-

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ence, and, after considering the results achieved by its predecessors, we may well ask ourselves the question as to whether these meetings, called into being by the optimistic policy of Blaine, have really, at least in a measure, come up to the hopes entertained by the first advocates of the Pan-American idea. The result thus far achieved, expressed in the form of actual laws and treaties, could indeed scarcely be smaller than it is. Yet, though resolutions have been passed and repassed only to be neglected by the governments to whom they were directed, there has nevertheless been a growing sense that the conferences and the International Union are by no means destined to failure, but are called to play a prominent part in the development of an all-American civilization. The very existence of an informal association of this kind in which the representatives of States of varied interests are given an opportunity of exchanging views, of measuring each other, and of testing the extent of the sphere of common consent, is of itself a great advantage, even if few definite treaties result. But the whole matter of international administration is in its infancy and the germs which exist at the present time are all-important as indicating the tendency of future developments.

There are a number of international unions, most of which fulfil important functions respecting the common interests of nations. There are, for instance, the Universal Postal Union, the European Railway Union, the Telegraph Union, all having their seat at Bern. There is an International Union of Weights and Measures, as well as one on Information Concerning Customs Tariffs. Many of these unions have periodical conferences; they have executive bureaus, and some of them have arbitration tribunals. The organization and functions of these inter-

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national unions might well be studied with profit by the men interested in making the union of the American Republics more and more effective. For while the latter embraces many of the subjects thus independently organized in the European unions, in addition to some more far-reaching purposes, the problem of its efficiency is similar to that of the European organizations. The field of international administration is an increasing one. In matters of transportation, postal and telegraph service, sanitation, patent laws, customs and commercial arrangements, private international law, no nation is self-sufficing. Though on all these points it may guard its sovereignty, there are many principles upon which it may agree with other nations and which may be entrusted to some organ of international administration. The facts that the American International Union embraces so many subjects and that it has an organ in the Bureau of American Republics which is now given the opportunity of making itself very efficient, are matters of great importance for the future peace and welfare of the American continent as well as of the world at large. As the understanding between the American nations grows stronger, as they realize more completely their true community of interest, these international services will grow in importance and will become a strong bond of civilization.

It will be seen from this that the union of American republics is not looked upon as simply another name for a general protectorate of the United States over all America. Even were such a thing possible, the government of the United States has no intention to assume the burden of such a charge. At the third conference, the American government had no policy to force upon the sister republics. The American delegates went to this meeting with

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a clear conception of what the interests of their own nation demanded, yet with as definite a purpose merely to defend these interests if necessary, but in every other respect to give an impartial hearing to whatever might be proposed by other delegations, to claim no hegemony for the United States but simply to assist in arriving at a basis for common understanding. It is of course in the nature of things that a government of a nation so great and powerful as is the United States should exert a considerable influence in any council that it may enter, but there was absolutely no inclination to strive for an influence greater than would be freely accorded by the other governments as a natural result of the situation. The International Union of American States is, therefore, as its name implies, truly international, its action is based upon the unanimous consent of all the powers composing it, and no power or group of powers claims for itself an absolutely preponderating influence.

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# GENERAL TENDENCIES IN STATE CONSTITUTIONS[1]

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Throughout classical and medieval philosophizing runs a theory of a paramount or fundamental law, permanent in kind, because fixed in nature. This theory in its modern form, after voicing itself for a time in the Cromwellian period, came to the front in the American Revolution and found its proper expression in the written constitution. In our federal system, owing to the rigidity of the national Constitution, the development of that document must be traced in the varying decisions of the Supreme Court of the United States. In the Commonwealths a more flexible system of amendment prevails, and for that reason changes in what the States consider to be their fundamental law, may be traced more easily in the constitutions themselves, subject as they are to frequent revision and amendment.

In the Revolutionary period these constitutions were few in number, small in size, and contained a mere framework of governmental organization. Since that time some two hundred State constitutions have been made or revised. The forty-five now in force average in length over fifteen thousand words, the longest, that of Louisiana, having about forty-five thousand. In place of fundamentals only, they are filled with details, so petty in many

[1] This study constitutes one of a series of nine articles dealing comparatively with our State constitutions. The entire series is to be published in March, 1907, as a monograph by the American Academy of Political and Social Science.

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instances, as hardly worthy even to be dignified as statutory.

This tendency to enlargement is not without justification. The proper solution of problems arising from the complexity of modern interests, demands more wisdom and knowledge than is usually found in legislatures, which are often incompetent and sometimes venal. The democratic demand for legislation through convention, is really a demand for legislators of a higher grade. To legislatures in consequence are left the mere details of legislation with a minimum of discretion in the formulation of statutes. Their ability in this sort of thing is well seen in the biennial output by the States of nearly twenty thousand statutes, three-fifths of which are local, private, or special in kind.

Our present State constitutions represent different stages of development and may be divided into four sets: (1) the six New England constitutions, (2) the ten made during the twenty-five years ending with 1865, (3) the fourteen made from that date up to 1886, and (4) the fifteen new and revised constitutions of the last twenty years. Three more will probably be added to this number within the next twelve months[2] and an average of one per year may be expected from that time on. The process of amendment, through which about twenty additions are made annually to our constitutions, tends to modernize all of these.

A comparison of these sets shows that the starting point for the study of State constitutions is the article on the lawmaking department. This powerful body in Revolutionary days completely overshadowed the other two departments and was practically the repository of

[2] Oklahoma, Michigan, and possibly Iowa.

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the sovereign powers of the State. Though the theory of the separation of powers was held, all really important powers were in fact entrusted to the legislature. This is by no means the present condition. Not only have the other two departments been built up and strengthened at the expense of the assembly, but three other departments of government have developed into importance, and should be considered in any discussion of the division of sovereign powers. If the government is that organization through which all the sovereign powers of the State may be expressed, then surely in modern times we should speak not merely of the three historic departments of government, viz: the executive, the judicial, and the legislative, but also of the differentiations from these, the administration, the electorate, and that nameless agency which in every State has the legal right to formulate the fundamental law, an agency which, for want of a better name, may be called the *legal sovereign*. These six departments unitedly may exercise every conceivable power included within the term sovereignty.

The general tendency in regard to these six departments of government, as shown by our existing constitutions, will be indicated in order, and then attention directed to the lengthy series of limitations placed on the exercise of other powers not removed from legislative discretion.

I. *Administration.* Historically administration is of course part of the executive function, but in our Revolutionary period it was at first controlled, and in part carried on, by the legislatures. This was done through committees, temporary and then permanent. The work performed by these was gradually transferred to paid officials, who, as functions became specialized, were organized

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for the purpose of carrying on the work of administration, into the numerous boards, commissions, and departments of government. Most of our States are still in this stage of development. Every new line of activity results in the formation of a special board or department, the organization and powers of which are frequently defined in the constitution. This also regularly provides for the election by popular vote of the heads of the chief administrative departments, such as the secretaries of state and of the treasury, the comptroller or auditor, and the superintendent of education. As these numerous boards and departments really perform the larger part of governmental business, it is surely advisable that the several articles and provisions of the constitution be gathered together and placed under a separate heading, entitled Departments of Administration. Their functions also should be coördinated, unified and thoroughly supervised. The absence of such centralization is perhaps the greatest weakness in local administration. Supervisory control over such bodies by legislative committees tends to become merely nominal, with the inevitable consequences of inefficiency and lack of economy. There is, however, a strong tendency to center such powers in the executive, making him the head of the administration as in the national system. This is done by bestowing on him large powers of appointment and removal, authority to demand reports, and to investigate the management of departments.

II. *The Executive.* Aside from control over administration, the chief gain in power on the part of the executive is his veto over legislation. In 1788 two States only[3] had placed the veto power in their constitutions: at this

[3] Mass., N. Y.

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time but two States withhold it.[4] Thirty-one States adopt the national fraction of two-thirds of both Houses to over-ride the veto, the other twelve prefer a majority or three-fifths. Thirty States now allow the governor to veto items of appropriation bills, and three of these also allow him to veto part or parts of any bill.[5] If adjournment intervenes between the sending of a bill to the governor and its return approved or vetoed, ten States allow the governor a period of from three to thirty days to decide whether or not to approve such bills. Eighteen States allow him to file objections with the secretary of state, thereby defeating the bill. The veto power, especially when strengthened by the power to veto items and to approve or disapprove after adjournment, has aided greatly in the enlargement of the importance of the executive and in the conservation of public interests.

The governor's term of office is four years in twenty-one States, two years in the same number, three in New Jersey and one year in Massachusetts and Rhode Island. The office of lieutenant governor is still retained in thirty-two of the States. He presides over the senate in thirty of these. In Massachusetts and in Rhode Island, he is a member of the council, or of the senate, *ex officio*, but presides only in the absence of the governor, who by the constitution is presiding officer. The old fashioned executive council is still retained by three of the New England States,[6] and there is a modified form of it in North Carolina. Iowa, by statute, has an executive council made up of the governor and the heads of three departments.

III. *The Judiciary Department.* The older constitu-

[4] N. C., R. I.
[5] Wash., Va., Ohio.
[6] Mass., N. H., Me.

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tions disposed of this department in few words. Discretionary power was conferred on the legislature, and judges, appointed by governor or legislature, usually held a life tenure. The newer constitutions completely reverse this practice. The courts in the United States do not simply decide cases, they interpret finally the constitution, and to that extent are a political factor. For this reason complex business conditions and the rise of corporate interests necessitate much more attention to this department of government. The Constitution of Louisiana, for instance, devotes about twelve thousand words to the courts of the State and of the city and parish of New Orleans. The newer constitutions regularly outline the grades of courts, define their powers, set the boundaries for judicial districts, and regulate the number and tenure of the judiciary. Three of the original States[7] still retain a life tenure, but all others fix a term of years for judges of the supreme court: the term varies from two to twenty-one years. Twenty States favor the six-year term, eight and twelve years being the terms next favored. Three States have long terms,[8] and Vermont a two-year tenure. Six States only retain appointment through the governor aided by council or senate.[9] Four choose through the legislature,[10] and one (Connecticut) nominates through the governor and elects through the assembly. The other States all elect their judiciary and show no tendency in the other direction. Four of the New England States still allow the governor or assembly to ask the supreme court for opinions on questions of law. South Dakota and Florida allow the governor this privilege,

[7] Mass., N. H., R. I.
[8] Pa. 21 years, Md. 15 years, N. Y. 14 years.
[9] Me., Mass., N. H., and Del., Miss., N. J.
[10] R. I., Vt., S. C., Va.

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but all the other States with greater wisdom reject this provision. There is a marked tendency in the constitutions to merge law and equity into a common procedure, to modify the jury, to define libel, and to safeguard the exercise of eminent domain by quasi-public corporations. All these tendencies unitedly show a strong determination to make the judicial system responsible directly to the electorate.

IV. *The Constitutional Convention.* The modern theory of a fundamental law, and its embodiment in the written constitution, have necessitated the development of a governmental agency for the express purpose of formulating the fundamental law. Two forms of this agency are in use among the States, the legislature and the convention. (1) The legislature in the performance of this office is not properly a legislature, but a convention. This is shown by the fact that its recommendations are not sent to the governor for his approval or veto, but to the electorate for final decision. The older method of amendment was through the action of two assemblies and large fractional votes by assembly and electorate. At the present time action by one assembly is sufficient in twenty-six States. Eighteen still require two assemblies, and the remaining State (New Hampshire) amends only in convention. All but Delaware use the referendum for final decision. Seventeen of the constitutions still require a two-thirds vote of both houses on amendments: seven, a three-fifths vote; in sixteen a majority is sufficient. Only two States require more than a majority for referenda, Rhode Island (three-fifths), and New Hampshire (two-thirds). The usual requirement, that of twenty-eight States, is "a majority of those voting thereon," but a few make amendment well nigh impossible by requiring a

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majority of the electors, or a majority of those voting at a general election.

(2) Few seem to realize the importance of the constitutional convention in American State governments. It is the great agency through which democracy finds expression. In its latest form, that of a body made up of delegates elected from districts of equal population, it is one of the greatest of our political inventions. Through it popular rights may be secured in the constitution, legislative tyranny restrained, and powerful interests subordinated to the general welfare. Not that these objects have as yet been attained, but the agency is here through which an enlightened public opinion can express itself.

All but thirteen of the States expressly provide for the calling of a convention. In twelve of the thirteen, conventions can be called under legislative authority. In one State only (Rhode Island) is there doubt about the matter. Its supreme court in 1883, when requested by the senate for an opinion, in its reply concluded that under the Constitution a convention could not be called. Judge Jameson, however, in his great work on Constitutional Conventions,[11] in discussing this opinion reaches the opposite conclusion. If the composition of the convention is mentioned at all in the constitution, the usual provision is that it be made up of representatives from districts of equal population. There are, however, a few exceptions. Since the year 1890, under the older theory that the convention is the repository of sovereign powers, five constitutions have been promulgated by conventions without referendum.[12] To check this possibility, fourteen constitutions expressly require the referendum, and the other States would likely do so by statute.

[11] 4th ed., pp. 601–615.

[12] Miss., S. C., Del., La., Va.

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V. *The Electorate.* If this body, instead of being referred to as the "sovereign people," should be treated, from the legal standpoint at any rate, as a governmental agency, clearness in discussion would be gained. Under the constitutions this governmental agency has three sets of powers. (1) The power of appointment to certain offices through elections; (2) the power to assist in law-making through the referendum and to some extent through the initiative; and (3) the power to assist in judicial decisions through service on jury. These powers are steadily increasing through the agency of the convention. The chief officials of the State and municipality, the law makers of all grades, and judges supreme and inferior, are now regularly elected by popular vote. The verdicts of juries now are often made by a fraction of the whole instead of by unanimous vote. The referendum is generally required for final decisions on fundamental law, and very largely on local and general statutes. The most remarkable development of this power may be found in the Constitution of Oregon since its amendment in 1902. By this, the power of initiative and referendum is fully secured to the electorate, both in statutory and constitutional provisions. These powers of the electorate are plainly specified in the constitutions and are clearly governmental in kind, as truly so as any other of the agencies of the State.

The usual basis for membership in the electorate is that they be male citizens of the United States at least twenty-one years of age. Nine States still allow aliens to vote who have declared their intention to become citizens, four States grant suffrage to women, eight States have a slight educational qualification, six other States have an educational qualification as one of several alternatives,

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and three of these introduce a property qualification as an alternative, but otherwise, this historic restriction survives only in Rhode Island, in the election of members of city councils.

VI. *The Legislature or General Assembly.* The Revolutionary constitutions differed widely in respect to the organization and membership of their legislatures. Very noticeable, however, is the present tendency to approximate a common type. In all the States the legislature is bicameral. Thirty-eight States elect the members of the house biennially; senators have a four-year term in twenty-nine States, and twenty-four provide for a system of class rotation in the senate. A biennial session is required in thirty-eight States, and thirty-one fix actually or practically a time limit for legislative sessions: this in eighteen States is fixed at sixty days. The membership of the State legislatures is unitedly about seven thousand, but nearly two thousand of these are found in the seven[13] States that have assemblies of over two hundred members. The size of the membership in each house naturally varies with the population of the State, but if the seven mentioned above be omitted, the general average is a membership of about thirty-five in the senate and ninety in the house. The house membership is regularly from two to three times that of the senate.

In seventeen States the membership of both houses is made up of representatives from districts of equal population. In nineteen other States there is a requirement that a locality, either county or town, be represented in one or both houses. In these States however, the requirement modifies only slightly the principle of popular representation, and the districts are practically of equal pop-

[13] Ill., Ga., Pa., Mass., Vt., Conn., N. H.

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ulation. In other words, thirty-six of the States make their legislative houses popular in basis. The nine other States depart from this principle by requiring a disproportionate representation for their rural towns, or counties of small population. The worst offenders in this respect are Delaware, Maryland, Vermont, Connecticut and Rhode Island.

*Limitations on Legislatures.* Under the National Constitution the powers not delegated to the federation nor prohibited to the States are reserved to the States. This reserved power may be exercised in each State by its legislature, unless the local constitution re-delegates part of this power to the other departments of government, and places restrictions and prohibitions on legislative use of the remainder.

One would think that since our legislators usually come from districts of equal population they would by constitution be entrusted with large discretionary powers in legislation. This, however, is far from being the fact. There is a steadily increasing tendency to restrict in every possible way the enormous powers of legislatures. In general the length of a constitution indicates the amount of restriction placed on lawmaking. Every provision in a bill of rights limits by so much legislative initiative. The rapidly increasing powers of the executive and the electorate in appointment, administration, and lawmaking are all at the expense of the assembly; the growth in importance of the constitutional convention subordinates proportionately its rival—the legislature. Every article in the constitution that fixes the organization and powers of a department of administration, or division of government, or defines a policy in regard to important interests, is to that extent a restriction on legislative discretion.

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Yet in the newer constitutions one may expect to find, as already indicated, lengthy articles on the judicial and administrative departments, and, moreover, much regulation of taxation, finance, local government, education, elections and the suffrage, land, mines, corporate interests and labor. To these regulations should be added long lists of prohibitions, such as those against special or local legislation, and numerous regulations of procedure in respect to the handling of bills. Subtract all these limitations on legislative powers from the totality, and the question may then well arise whether it will ultimately prove worth while to retain an expensive legislature to exercise its small residue of petty powers. A convention meeting periodically, and well supervised administrative departments with ordinance powers, might perform all legislative functions to entire satisfaction.

It seems plain that the really important lawmaking body at the present time is the convention. Its members are of a higher grade and turn out work distinctly superior to that of legislatures. These, in fact, are bodies having chiefly ordinance powers. Whenever, through sudden changes in conditions, a legislature unexpectedly develops large discretionary power in statute-making, the next convention in that State settles the principle itself and thereby adds another limitation to legislative initiative. If this tendency continues, the biennial session will become quadrennial, the term be limited to forty or sixty days, and every inducement offered our legislators to do as little and to adjourn as speedily as possible. On the other hand if our States can make improvements in the legislative system, and select a better grade of legislators, our lawmaking might continue to be entrusted to legislatures, whose members, as the early constitutions of

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Maryland and Vermont put it, should be persons "most wise, sensible, and discreet," and "most noted for wisdom and virtue."

In conclusion, attention may well be called to the practical disappearance from our constitutions of some old time provisions. Among these may be mentioned the annual election, and the annual session, the governor's council, and unequal representation of the people in law-making bodies, the life tenure of judges, and the advisory capacity of the supreme court. Religious restrictions on office-holding, and the property qualification for suffrage, with very slight exceptions, have gone; the town system of New England is dying in that section and does not exist outside of it. The real local units of administration now are, (1) the rural county with its numerous subdivisions, and (2) the incorporated city, both of which are gaining power throughout the United States.

If general tendencies in the making of constitutions may be condensed into a sentence, we may say that governmental powers are centering in the electorate, which voices itself through the ballot and the convention.

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# AMENDMENT OF STATE CONSTITUTIONS

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The right of the people, acting within the bounds of the law and through organs constituted in conformity with the prescriptions of the existing constitution, to alter, amend, or abolish their form of government whenever they deem it necessary to their safety and happiness is, in effect, declared by practically every American bill of rights to be not only fundamental but inalienable and indefeasible. The phraseology differs in some of them but the substance is the same in all. Without such a right the mistakes and errors of the past could not be eliminated from the body politic nor the accumulated wisdom and experience of other States utilized. Without it, the fundamental maxim that constitutions grow instead of being made would be meaningless and political development impossible. An acute thinker has well observed that no constitution can expect to be permanent unless it guarantees progress as well as order.[1] Political conservatism is a virtue too often trampled upon by statesmen, but it has its limits, and, in its exaggerated form, becomes a source of revolution. The amending power has been aptly compared to a safety valve which ought to be so adjusted as not to discharge its peculiar function with too great facility lest it become an escape pipe for party passion and political prejudice, nor with such difficulty that the force needed to induce action will explode the machine.[2] That is, it

[1] J. S. Mill: Representative Government, p. 8.
[2] Jameson: Constitutional Conventions, p. 549.

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should be so adapted as to reconcile the requisites of safety with those of progress.

It is the purpose of this paper to summarize American practice, examine the methods of procedure prescribed by the existing State constitutions and inquire how far they conform to the above rule.

## EARLY IDEAS AND PRACTICES

Before the close of the eighteenth century, twenty-five constitutions had been framed by the States and put into operation. Of these but three (Mass., 1780; N. H., 1784 and 1792) were submitted to the electorate for popular ratification, the rest being put into force by the conventions or legislative assemblies which framed them. The reason for this is not clear. In some of the States it may have been due to the fear of the Tory vote; in others, it was probably due to the necessity for haste arising out of the conditions brought about by the sudden collapse of the British authority; while in still others, it was probably due to the rather crude conception then prevailing with regard to the distinction between constitutions and statutes, and a confusion of the powers of legislative bodies with those of constituent assemblies. Everywhere the idea was strong that a convention made up of popularly chosen delegates was a repository of the sovereign power of the people, and had a right to establish a frame of government without subsequent popular sanction. Considering that the framers of these early instruments were without the benefit of experience and that most of them were struck off by bodies often irregularly assembled during the progress of a life and death struggle with Great Britain, we need feel little surprise that the procedure did not always square with twentieth century

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ideas. Much less did these early constitutions measure up to present standards as regards their content and arrangement. Nowhere are their imperfections more clearly revealed than in the failure to provide a legal, orderly, and safe procedure for their own revision.

Of the twenty-five eighteenth-century State constitutions, nine contained no provisions whatever for their own amendment[3] although the bills of rights of most of them recognized the "inalienable and indefeasible right of the people to alter, amend or abolish their form of government" whenever they should deem it necessary to their safety and happiness. Several of them, like the Constitutions of South Carolina of 1776 and 1778, were in effect nothing more than mere statutes, and could have been amended or repealed as any other act of the legislature. In the first Constitutions of Delaware (1776) and Maryland (1776), the amending power was expressly conferred upon the legislature; an extraordinary majority being required in the former case, and publication of the amendment before the election of the ratifying legislature, in the latter. It was similarly conferred by the Delaware Constitution of 1792, the South Carolina Constitution of 1790, and the Georgia Constitution of 1798, but in each case the approval by a two-thirds majority of two consecutive legislatures was required. In the other constitutions which contained amending clauses, all of them, except two, provided for amendment only through the agency of a convention called for the purpose. The exceptions were the Constitutions of South Carolina of 1790 and of Delaware of 1792. Both permitted amend-

[3] They were the Constitutions of N. H., 1776; N. J., 1776; N. Y., 1777; N. C., 1776; Pa., 1790; S. C., 1776 and 1778; Tenn., 1796 and Va., 1776. The Pennsylvania Constitution of 1776 contained an amending provision but for some reason it was dropped from the constitution of 1790.

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ment by the legislature as stated above, while South Carolina in addition authorized the calling of a convention whenever two-thirds of the legislature should choose to do so. Delaware authorized the legislature to call a convention by a bare majority, but only after a vote of the people had been taken. They were, therefore, the first American State constitutions to provide the dual system of amendment now so common. Several constitutions required the legislature to take the sense of the people at specified times on the question of calling a convention. Thus the Massachusetts Constitution of 1780 required the submission of such a question in 1795; the New Hampshire Constitution of 1792 required it in 1800 and every ten years thereafter; and Kentucky, 1792, required it in 1797. The Constitution of Georgia, 1789, and New Hampshire, 1784, imposed upon the legislature the duty of calling conventions, in 1791, without taking the sense of the electorate.

An unusual method of amendment was provided in the Constitutions of Pennsylvania, 1776, and Vermont, 1777. Each authorized a council of censors to be chosen every seven years, charged, in addition to certain censorial functions, with calling a convention within two years if there appeared to be "an absolute necessity" of amending any article of the constitution. Publication of the proposed changes for a period of at least six months before the election of delegates was required. The Pennsylvania council consisted of twenty-six members, two elected from the city of Philadelphia and two from each of the twelve counties of the State, and contained among its members Frederick A. Muhlenburg, Thomas Fitzsimmons, and Arthur St. Clair. It held two sessions, one in November, 1783, and the other in June, 1784, but was unable to agree upon the question of calling a convention, and, after considerable wrangling, adjourned and never met again. The consti-

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tution of 1790 not only abolished the council outright, but neglected to make provision for amendment through any other mode. The Vermont council consisted of thirteen members and had a much longer and more successful career than did its Pennsylvania prototype. It held regular septennial meetings from 1785 to 1870, when it was abolished. With rare exceptions it proposed a number of amendments at each meeting and ordered a convention which sometimes ratified the proposals of the council but more often rejected them.

It is worthy of note that, with a single exception (Vermont, 1793), none of the eighteenth century constitutions required the submission of proposed amendments to the electorate for approval or rejection although, as stated above, several required a referendum on the question of calling a convention and, in fact, several amendments were submitted to the people and approved before being put into operation. The Constitutions of Delaware, 1776, North Carolina, 1776, and Pennsylvania, 1776, undertook to set limitations to the power of amendment by declaring certain of their provisions unamendable. Thus, Delaware forbade the change of the State's name, the alteration of its bicameral legislature, the establishment of slavery, or the creation of a State church; while North Carolina and Pennsylvania declared their bills of rights to be inviolable and unamendable. The provision in the Constitution of Delaware which sought to prohibit structural changes in the government was not only indefensible but vicious. Those of North Carolina and Pennsylvania, on the other hand, related mainly to the fundamental rights of the individual, and deserved to remain permanent.

Several reasons may be given for the silence of so many of the early constitutions on the question of their own revision. Certainly, the framers of these instruments

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could not have been fatuous enough to suppose that future alterations would be unnecessary, for, in fact, all of them were either modified or superseded entirely within a few years. It is probable that the statesmen of that time did not foresee the advantage of expressly pointing out in their frames of government a legitimate mode of procedure to be followed in making alterations in them, and that they did not appreciate the fact that, in the absence of a prescribed mode of amendment, all changes become, in effect, revolutions. They rather fell back upon the primary truth, repeatedly announced in their bills of rights, that the people have a right to alter, amend or supersede their constitutions whenever they wish, and they probably could see no advantage in limiting this right by constitutional restrictions. Furthermore, some of the earlier constitutions were intended to be mere temporary arrangements to last only until the reconciliation with Great Britain, to which probably a majority of the people of the colonies looked forward with hope. Indeed, this is practically stated in the Constitutions of New Jersey, New York and others. Finally, since most of the early constitutions were very brief, being restricted to a mere outline of the organization of the government, and wholly free of the statutory matter such as swells some of the present constitutions into bulky codes,[4] the necessity for immediate and frequent amendment was far less than now, and that may have accounted, in some cases, for the failure to provide a method of amendment. Whatever may have been the reason, the obvious advantage, not to say

[4] The Constitution of New Hampshire, 1776, for example, contains but few more than 900 words. Compare it with the Constitution of Missouri, 1875, which contains 27,000 words with the Constitution of Virginia, 1901, which contains about 35,000 words, and with that of Louisiana, 1898, which contains over 40,000 words.

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necessity, of pointing out in the constitution a method of procedure to be followed in making changes in the fundamental law soon came to be appreciated, and of the eighty-eight constitutions that have been framed since the beginning of the nineteenth century only three have failed to contain such a provision.[5]

It is now well settled that amendments are to be made only in the modes pointed out in the constitution, and that any departure therefrom is revolution. The idea of the people thus restricting themselves in making changes in their organic law is original, and is one of the most signal evidences that in this land liberty means not the giving of rein to passion or impulse, but the exercise of power by the people for the general good and, therefore, always under the restraints of law.[6]

The procedure of effecting constitutional changes, whether isolated amendments or extended revisions, may be reduced to two general forms: first, that through the agency of a convention of delegates called for the purpose; second, that through the agency of the legislature followed by a referendum. Of eighty-six constitutions made since the beginning of the nineteenth century which contain express provision for their own amendment, ten of them provided for amendment through the agency of a convention only;[7] thirty-one through the initiation of the legislature followed by the referendum;[8] while forty-five combined both methods and permitted amendment

[5] They were the Constitutions of Virginia, 1830, 1851 and 1864.

[6] Curtis, Const. Hist. of the U. S., vol. I, p. 261.

[7] Fla., 1865; Ga., 1865; Ill., 1818; Ind., 1816; Ky., 1850; La., 1812; Md., 1851; Miss., 1817; Neb., 1867; Ohio, 1802.

[8] Ala., 1819; Ark., 1836, 1864, 1868, 1874; Conn., 1818; Del. 1831; Ind., 1851; La., 1845, 1852, 1864, 1868, 1898; Me., 1820; Mass., 1822; Miss., 1832, 1868, 1890; Mo., 1820, N.. J., 1844; N. Y., 1821; Oregon, 1857; N. Dak., 1889; Penn., 1838, 1873; R. I., 1842; Tenn., 1834; Tex., 1845, 1868, 1876; Vt., 1870.

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through either agency.[9] Of those constitutions which provided for their own amendment through the agency of a convention only, all but one belonged to the period antecedent to the close of the Civil War; while of those made since 1865, all but twelve have provided the double method of amendment. Of the forty-five constitutions which contained provisions for amendment by both modes, all but fifteen belong to the period subsequent to the close of the Civil War, and of the constitutions made during the first half century after the Declaration of Independence, but two authorized both modes, and they belonged to the eighteenth century (Delaware, 1792; and South Carolina, 1790).

From these facts several conclusions may be drawn: first, that the policy of making no provision for amendment belongs to the eighteenth century; second, that the policy of effecting amendments through the agency of the convention only, belongs, roughly, to the first half of the nineteenth century; third, that amendment through legislative initiative and popular ratification only, was characteristic of the period immediately preceding and following the Civil War; and, fourth, that the double mode of amendment belongs to the present. Thus, the trend of development has shown a growing tendency toward the legislative mode, as against revision through the agency of the constituent assembly, and a preference for the double method over both. The evolution of thought in this respect is

[9] Ala., 1865, 1867, 1875, 1901; Cal., 1849; Del. 1897; Fla. 1868; Ga., 1868; Ill., 1848, 1870; Idaho, 1889; Iowa, 1846, 1857; Kan., 1859; Ky., 1891; Md., 1864, 1867; Mich., 1835, 1850; Minn., 1857; Mo., 1864, 1875; Mont., 1889; Nev., 1864; N. Y., 1846, 1894; N. C., 1868, 1876, 1901; Neb., 1875; O., 1851; S. C., 1865, 1868, 1895; S. Dak., 1889; Tenn., 1870; Tex., 1866; Utah, 1897; Va., 1870, 1901; W. Va., 1863, 1872; Wis., 1848; Wash., 1889; Wyo., 1889. In Delaware the referendum is not required although the amendment must be passed by two successive legislatures with intervening elections.

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well illustrated by the history of the amending provision in the New York Constitution. The Constitution of 1777 contained no provision whatever on the subject of amendment or revision; that of 1821 provided for amendment through the initiation of the legislature followed by the referendum, but made no provision for calling a convention; the constitution of 1846 established the dual mode by authorizing the legislature to initiate particular amendments and by providing for periodic revision through the agency of a convention. Finally, the constitution of 1894 goes to lengths which have not yet been attained in any other State in providing not only for amendment through the dual mode of legislature and convention, but also for the automatic assembling of a convention once in twenty years if the people vote for it, independently of any action of the governor or legislature. In other words, starting with a constitution which was assumed to need no alteration, experience gradually taught that not only should two modes of procedure be provided, one for specific amendments and another for extensive revisions, but that the power of the people to make a complete revision should not be subject to the whims of factional legislatures, or the prejudices of partisan executives.

## PRESENT MODES OF PROCEDURE

Of the forty-five State constitutions now in force, thirty provide the dual mode of procedure for effecting amendments. In fourteen of the remaining fifteen, the agency prescribed is that of the legislatures followed by the referendum.[10] New Hampshire, alone, recognizes the conven-

[10] Ark., Conn., Ind., La., Mass., Miss., N. J., N. Dak., Ore., Pa., R. I., Tenn., Tex., Vt.

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tion as the only medium through which alterations in the constitution may be effected.

The provisions for calling conventions into existence may be grouped into three classes: first, those which make it the duty of the legislature periodically, or at specified times, to take the sense of the electorate on the question of whether a convention to revise the constitution shall be called; second, those which empower the legislature to submit such a question at its discretion, but do not require it; third, those which authorize the legislature to call conventions at its discretion without resort to the referendum. Several of the eighteenth century constitutions contained provisions requiring the legislature without a referendum to call a convention at certain intervals.[11] But there is no constitution now in force which contains such a provision.

Provisions of the first class are found in the Constitution of Iowa which requires the legislature to take the sense of the people on the question of calling a convention every ten years beginning in 1870;[12] of Maryland which requires a referendum every twenty years beginning in 1887; of Michigan which requires a referendum every sixteen years beginning in 1866;[13] Ohio every twenty years beginning in 1871, of New York every twenty years beginning in 1906, and of New Hampshire every seven

[11] The Pennsylvania Constitution of 1776 required the legislature to call a convention every seventh year; so did those of Vermont, 1777, and New Hampshire, 1784. The Georgia Constitution of 1789 required a convention to be assembled in 1794.

[12] In 1900 a proposition to call a convention was submitted to the voters of Iowa but was defeated by a small majority.

[13] In 1898 the people of Michigan voted on the question of calling a convention but owing to the requirement of a majority of those voting *at the election* the proposition failed of adoption. The question was again submitted in 1904 and lost for the same reason. The question was submitted for a third time at a *special* election in 1906 and received a majority of 70,000 votes.

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years beginning in 1792.[14] Iowa, Maryland, Michigan, and Ohio require the legislature to call the convention if a majority of the qualified electors voting at the election have expressed a preference for revision; New Hampshire makes no provision on the subject; while New York eliminates the legislature entirely and provides that in case a majority of the electors voting on the question have voted affirmatively, the electors of every senate district of the State shall elect three delegates at the next ensuing general election, and the electors of the State at large shall choose fifteen delegates. The delegates so elected shall convene at the capitol on the first Tuesday of the ensuing April and proceed with the work of revision. The constitution also regulates the matters of compensation, quorum, and organization, and empowers the convention to provide for its own printing and to choose such employees as it may deem necessary and fix their compensation. The purpose of this rather unique provision is to remove entirely the possibility of legislative or executive intervention to defeat the will of the people when it has once been pronounced in favor of revision and was the result of a bit of recent political history in New York State. The constitution of 1846 required the legislature to take the sense of the electorate in 1866 and every twenty years thereafter, on the question of calling a convention. At the general election of 1886 the voters decided by the overwhelming majority of 575,000 to 31,000 in favor of a convention. In 1887 the legislature passed a bill to provide for calling the convention, but it was vetoed by Governor Hill because of his objection to that part of the bill relating to the number of

[14] In 1894 the proposition to call a convention in New Hampshire was rejected; it was again submitted in 1900 and carried. The convention was held in 1902. It submitted ten amendments, four of which were adopted.

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delegates and the method of apportionment provided by the bill. Thus, on a mere matter of detail, the practically unanimous wish of the people for a revision of the Constitution was defeated by the executive veto. Most wisely, therefore, have they provided a means of assembling a convention and revising the constitution without the power of partisan executives and legislatures, as stated above, to defeat the popular demand.

Provisions of the second class empowering the legislature to submit the question whether a convention shall be called, whenever a revision is deemed advisable or necessary, are found in twenty-six constitutions.[15] In seventeen of these, a vote of two-thirds of both houses of the legislature is required to make such a recommendation; in one, (Nebraska) a three-fifths majority is required, and in seven, a bare majority is sufficient. Kentucky requires the concurrence of a majority of two successive legislatures. Usually the proposition is required to be entered on the journals after a yea and nay vote, and, in a few cases, to be published in the newspapers. In every case a majority of those voting on the question, or voting at the election, is necessary to authorize a convention, and in Kentucky the total number of votes cast for the convention must be equal to one-fourth of the number of qualified voters who voted at the last general election. In all except nine, the constitution fixes the number of delegates to be elected; in the others, that is left to the judgment of the legislature. In some cases, the number fixed is the same as the number of representatives in the lower house; in

[15] Ala., Cal., Col., Del., Fla., Idaho, Ill., Iowa, Kan., Ky., Mich., Minn., Mo., Mont., Neb., N. Y., Nev., N. C., O., S. Dak., S. C., Utah, Va., Wash., Wis., Wyo., In three of these, Iowa, Michigan and New York such a question, as stated above, must be submitted at regular intervals. In 1899, the people of California voted against holding a convention.

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some, it is not less than the membership of both houses; in Idaho and Wyoming, it is not less than double the membership of the House of Representatives; in California and Illinois, it is twice the membership of the Senate, and in Delaware, the number is fixed at forty-one.

In every case except two, the legislature is authorized to provide for the election of the delegates if the results of the referendum are favorable. The exceptions are Missouri, where the governor is authorized to issue writs to the sheriffs of the several counties ordering them to hold elections for delegates, and New York, where the electors are empowered to choose delegates at the next general election, thus obviating the necessity of a legislative call. In a few cases, the constitution fixes the qualifications and compensation of delegates, prescribes the manner of choosing them, fixes the time of meeting, and provides for the filling of vacancies. In a large majority of cases, however, the constitution makes no provision on the subject but leaves everything to be regulated by the legislature in such manner as it sees fit. Colorado, Illinois, and Montana require all delegates to take an oath to support the Constitutions of the State and of the United States before entering upon their duties. California, Idaho, Illinois, Maryland, Missouri, Montana, Nebraska, New York, Ohio, Washington, West Virginia, and Wyoming require all amendments and revisions drafted by conventions to be submitted to the electorate for approval or rejection. To ratify, a majority of the "people" is required in Idaho, Washington and Wyoming; a majority of those voting on the proposed revision is required in Maryland, Missouri, Nebraska, New York, and Ohio; and a majority of those voting at the election is required in Illinois and Montana. In Michigan and New York the

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new amendments take effect if approved, on January first, following the referendum; in Missouri, thirty days after the election, and in California upon proclamation of the executive.

Provisions of the third class, which authorize the legislature to call a convention at its discretion without a referendum on the question, are contained in the Constitutions of Georgia and Maine, where the concurrence of two-thirds of both houses is all that is required.[16]

Turning to the second general mode of amendment, namely, legislative initiation and popular ratification, we find it authorized in every constitution of today except that of New Hampshire, where the convention is the only recognized constitutional agency for effecting either specific changes or extended revisions. In every State, in which the legislature may initiate a constitutional amendment, except two, the proposal may originate in either house. In Connecticut it must originate in the House of Representatives, and in Vermont in the Senate, a bare majority being required in the first case, a two-thirds majority in the second. In every State except Connecticut, the concurrence of both houses is necessary to the validity of the proposal. There the concurrence of the Senate is not required. Nevertheless, the proposal of the house must be published and approved by both houses of the next legislature before it can be submitted to the electorate.[17]

[16] Earlier constitutions containing provisions which belong to this class were those of Florida, 1838 and 1865; North Carolina, 1868; and South Carolina, 1790 and 1865.

[17] In 1903 the legislature of Massachusetts proposed an amendment to establish the initiative as a method of proposing amendments. It provided that any amendment petitioned for by 50,000 voters and approved by 15 senators and a majority of representatives should be submitted to the people at the next general election. The proposal, however, was not repassed by the legislature in 1904. Similar proposals have recently been rejected in Mo. and Neb.

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The extent of the majority required to propose amendments varies widely. In seventeen States it is two-thirds of all the members elected to both houses;[18] in seven, it is three-fifths (Alabama, Florida, Kentucky, Maryland, Nebraska, North Carolina, Ohio); in six, it is one more than half;[19] in Massachusetts, it is one more than half of the Senate and two-thirds of the lower house; in Vermont, the conditions are reversed, two-thirds of the Senate and a bare majority of the lower house being required. Certain formalities of procedure are required to be observed by the legislature in passing proposals for amendment. Thus in thirty-six States all votes for and against such proposals are required to be taken by yeas and nays and entered upon the journals, and, in addition to this requirement, the proposed amendment must be read three times on three several days in Alabama, Louisiana, Mississippi, South Carolina, Tennessee, and West Virginia. In every State except California, Michigan, North Carolina, and South Carolina, the constitution requires publication, in some form, of proposed amendments, for the enlightenment of the voters, and in one State (Pennsylvania), publication is required twice; before reference to the second legislature, and again before final submission to the electorate.[20]

[18] Cal., Col., Del., Ga., Idaho, Ill., Kan., Me., Mich., Miss., Mont., S. C., Tex., Wash., W. Va., Wyo.

[19] Ark., Ind., Iowa, Minn., Miss., Nev., N. J., N. Y., N. Dak., Ore., Pa., R. I., S. Dak., Tenn., Va., Wis.

[20] The Constitution of California authorizes such publication as the legislature may deem sufficient but does not require it. Recently, acts have been passed in several States, notably in Fla., Mich., S. Dak. and Wis., to secure greater publicity of amendments so submitted to the voters. An act passed by the legislature of Mich., in March, 1905, requires the Secretary of State to prepare concise statements setting forth the nature, purport and effect of proposed amendments and to send three copies of such statements to all daily and weekly newspapers of the State with the request that they give as wide publicity as possible to the proposed amendments. At least ten copies are required to be posted at each polling place; two each in Dutch, German and Polish and four in English.

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In Connecticut and Minnesota, publication of proposed amendments with the laws of the session is all that is required. The period of publication varies from four weeks in Missouri, Oregon, and Texas to six months in Arkansas, Ohio, and Tennessee, the most common period being three months, the time required in nineteen States. The medium of publication is usually the newspapers, one at least in every county of the State. Delaware requires publication in three papers in each county; Louisiana, in two newspapers in the parish of Orleans, and in one paper in the remaining parishes; Maryland, in two papers in each county, except the city of Baltimore where publication in three papers, one of which is printed in the German language, is required; Oregon requires publication in the "several papers" of the State; Vermont requires publication in the "principal newspapers;" Mississippi simply requires "public notice" to be given; while Illinois, Iowa, Nevada, New York, North Dakota, and Virginia require "publication" without specifying the medium. Publication in one newspaper in each congressional district is all that is required in Georgia. In Rhode Island, the method prescribed is the reading of the proposed amendment before the assembled voters in their town meetings

In thirteen States, amendments proposed by one legislature are required to be submitted to the succeeding legislature and ratified before the referendum may be taken.[21] In all of them except three (Delaware, Massachusetts, and Tennessee), passage of the legislature by a simple majority suffices. In Massachusetts, approval by a majority of the Senate and two-thirds of the lower house is necessary, while in Delaware and Tennessee a two-thirds majority of both houses is requisite. In nineteen States, the constitu-

[21] Ind., Iowa, Mass., Nev., N. Y., N. Dak., Ore., Pa., S. C., Tenn., Vt., Va. and Del.

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tion requires proposed amendments to be submitted in such a way as to enable the electors to vote separately on each amendment where several are submitted at the same election.[22] In sixteen States, proposed amendments must be submitted at the next general election occurring after the adjournment of the legislature; In New Jersey the referendum must be taken at a special election called for the purpose; in Connecticut and Rhode Island the vote must be taken at the town meetings; in several others, the time and manner are expressly left to the discretion of the legislature; in the rest no provision on the subject is made.

The size of the popular vote required to ratify is usually a majority of those voting on the proposition to amend, although in nine States a majority of those voting at the the election (whether on the question of amendment or not) is required;[23] in nine others a "majority of the electors" (presumably of the State as a whole) is required;[24] while in Tennessee it is a majority of those voting for representatives.[25]

In several States, substantial limitations are placed on the power of the legislature to propose amendments. In Colorado, by an amendment adopted in 1900, not more than six amendments (formerly one) may be proposed at the same session; in Illinois, no amendment to more than one article at the same session nor to the same article oftener than once in four years may be proposed. In Indiana, no

[22] Cal., Ill., Ia., Ga., Fla., Idaho, Kan., La., Md., Minn., Miss., Mont., Neb., N. Dak., N. J., O., Wash., Wyo.

[23] Ark., Col., Conn., Ill., Minn., Miss., O., Ky., N. C.

[24] Idaho, Ind., Mo., Nev., N. J., N. Dak., Ore., Vt., Wyo.

[25] The Constitutions of Mississippi and South Carolina, provide that no amendment ratified by the people shall have any validity until the legislature has by formal act inserted it in the constitution. The legislature has full discretionary authority in the matter and may decline to insert an amendment which has received the popular approval.

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additional amendment may be proposed while one, already having passed one legislature, is awaiting the action of the succeeding legislature or the referendum. In Kansas and Montana, not more than three amendments may be proposed at one election. In Kentucky, not more than two amendments may be proposed at the same time, nor shall any amendment which has been rejected upon referendum be again submitted within five years, nor shall any amendment relate to more than one subject. Pennsylvania forbids the proposal of an amendment oftener than once in five years. Tennessee allows proposals to be made only once in six years, and Vermont only once every ten years, beginning in 1880. Florida and Kentucky permit amendments to be proposed only at regular sessions, while Texas restricts the power to biennial sessions only.

The most extraordinary method of constitutional revision yet adopted is that provided by an amendment to the Constitution of Oregon ratified in June, 1902, the details of which have been worked out in a statute approved February 24, 1903. In brief, it permits proposed amendments to be drawn up by popular initiative and filed with the Secretary of State, who shall thereupon notify the governor, who in turn shall forthwith issue a proclamation announcing that such petition has been filed, with a brief statement of its tenor and effect. The Secretary of State is required to submit to the voters at the next general election any amendment thus proposed, and for the enlightenment of the electorate he is also required to bind up with the text of the amendment to be submitted copies of any pamphlets prepared by any person or organization filing the petition for the initiative, advocating the adoption of such measure, as well as any pamphlets prepared by any person or organization oppos-

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ing it, provided there is a sufficient number of such pamphlets to supply one to every legal voter in the State. The proposed amendments, bound with all pamphlets for and against, is then distributed to the county clerks and by them furnished to the local voters at the time of registration several weeks before the election.

This method was given its first trial on the fourth of June, 1906, when five amendmentts proposed by popular initiative were submitted to the voters and four of them ratified. It was the first instance of the amendment of an American State constitution without the intervention of a legislature or convention. From first to last it was amendment direct by the people. It is not only expeditious but promotes publicity and educates the electorate. Under the old method it required nearly five years to secure the adoption of an amendment, four years being required to run the gauntlet of two legislatures and approximately one for the referendum. Under the new method it can be done in four months. At the recent election, several desirable amendments were carried which, under the cumbersome provisions formerly obtaining, had been defeated year after year to the disgust of the citizens.

Delaware alone of all the States permits amendments to be made through the agency of the legislature without the direct approval of the voters voting on the proposed amendment. Passage of the amendment by two successive legislatures, two-thirds of the members of both houses concurring, has been the method of procedure in that State since 1792. This method of constitutional amendment has not been employed outside of Delaware since the Civil War.[26]

[26] Amendments proposed by the legislature were put into operation without popular ratification by the Constitutions of Arkansas, 1836 and 1864; of Florida, 1838; of Georgia, 1798; of Maryland, 1776; and of South Carolina, 1788.

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## JUDICIAL INTERPRETATION OF THE AMENDING POWER

In several instances the courts have been called upon to interpret the meaning of some of the above provisions. One of the first as well as one of the most important of such cases was whether, when the constitution expressly provided one method of procedure, another mode might be followed. The Massachusetts Constitution (revision of 1822) contained provision for amendment through the agency of the legislature but none for a convention. The legislature, in 1833, proposed to take the sense of the people on the question of calling a convention, but entertaining some doubt as to its right to proceed in a manner different from that expressly laid down in the constitution, addressed a communication to the judges of the Supreme Court inquiring if the legislature had the power to submit such a question to the people. The court answered negatively, saying, "We are of the opinion that under and pursuant to the existing constitution, there is no authority given by any reasonable construction or necessary implication by which any specific amendment or amendments to the constitution can be made than that prescribed."[27]

A similar question was raised in Rhode Island in 1883, and the Supreme Court being called upon for an opinion replied that the mode provided in the constitution was the only way in which it could be constitutionally amended for the reason that where power is given to do a thing in a particular way the words marking out the particular way prohibit other methods by implication.[28]

It is only where the constitution has authorized amendment through the sole agency of the legislature that the

[27] Opinion of the Justices, 6 Cush., Mass., 573.
[28] Opinion of the Justices, 14 R. I., 649.

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claim has been put forward that the convention method may be also employed in the absence of constitutional authorization. Where the conditions are reversed, and amendment through the agency of the convention only is authorized, no claim has ever been advanced that the legislative mode might also be followed. While the better legal opinion is in favor of the rule laid down by the supreme courts of Massachusetts and Rhode Island, American practice has not always conformed to the doctrine that the expression of one mode excludes another.[29]

Strict construction of the provisions relating to the procedure of amendment has been the uniform rule of the courts, although there have been notable exceptions. Thus, where the constitution prescribed that proposed amendments should be passed by two successive legislatures, and where a number of amendments having passed one legislature, one of the amendments, through some reason, was not submitted to the second legislature, it was held that the omitted amendment was not constitutionally ratified.[30] A somewhat similar case arose in Iowa, where an amendment having passed one legislature was materially changed in the course of its passage by the succeeding legislature. The Supreme Court declared the amendment to have been lost.[31] The common requirement that a proposed amendment to the constitution "shall be entered" upon the journals of each house is, however, satisfied by an identifying reference describing its title, scope and objects, the copying of the amendment at length being unneces-

[29] Indeed, twenty-seven constitutional conventions have been called by the legislatures since the Revolution without express constitutional authority.

[30] Collier v. Frierson, 24 Alabama, p. 100 (1854).

[31] Koehler v. Hill, 60 Iowa, 543 (1883).

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sary.[32] But there are decisions to the contrary,[33] and where no entry at all is made the omission is fatal.[34] The constitutional requirement that proposed amendments shall be passed by a "two-thirds majority of each house" has been interpreted to mean two-thirds of a quorum only; the fact that the measure is not itself an alteration of the constitution, but a mere proposition to be submitted to the people, justifying a liberal interpretation.[35]

The uniform rule that the provisions of the constitution relative to the procedure of the legislature in proposing amendments shall be strictly construed was departed from by the Supreme Court of North Carolina. In 1875, the legislature passed a bill proposing seventeen amendments, eight of which were passed by the succeeding legislature and the other nine rejected. The eight amendments were then incorporated in as many separate bills, submitted to the electorate and ratified. They were declared to have been constitutionally ratified, notwithstanding the fact that it did not follow that because the second legislature adopted the eight amendments separately, the preceding legislature would have adopted them in that form or any of them.[36]

In Iowa it was held that an enrolled resolution reciting that an amendment had been passed by one legislature was not conclusive upon the courts as to the form of such amendment as originally proposed, and did not preclude an examination of the journals to ascertain whether in fact the amendment was the same as that passed by the second

[32] Thomason v. Ruggles, 69 Cal., 465 (1886); prohibitory amendment case, 24 Kan., 700 (1881); State v. Brookhart, 84 N. W. Rep., 849 (Mo., 1901).

[33] Oakland Paving Co. v. Hilton, 69 Cal., 479 (1886); Koehler v. Hill, 60 Iowa, 543 (1883).

[34] State v. Tufly, 19 Nev. 391.

[35] Green v. Weller, 32 Miss., 650 (1856); State v. McBride, 4 Mo., 303 (1836).

[36] Trustees University of N. C. v. McIver, 76 N. C., 72 (1875).

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legislature.[37] In Arkansas it was held that the power conferred on the legislature to amend the constitution did not authorize the modification or repeal of any provision of the bill of rights.[38] The Louisiana Supreme Court has held that propositions for amendments are not laws and need not, therefore, be submitted to the executive for his approval,[39] but in California it was held that an act of the legislature fixing the time and manner of submission must be approved by the governor as other laws.[40] Of all the constitutions, now in force, that of Kentucky alone expressly declares that the approval of the governor is not necessary to the validity of any proposal adopted by the legislature. The meaning of the common requirement that where more than one amendment is proposed at the same time, they shall be submitted separately, came before the Supreme Court of Wisconsin in 1883. The legislature desiring to amend the constitution so as to change from annual to biennial sessions of the legislature, submitted several distinct propositions as one amendment under the following heads: (1) To change the time of election and the tenure of members of the legislature; (2) To establish biennial sessions of the legislature; (3) To alter the compensation of members. The constitutionality of this proceeding being attacked in the courts, it was held that amendments to be submitted separately must be construed to mean amendments which have different objects and purposes in view; they must relate to more than one subject and have at least two distinct and separate purposes, not depending upon or connected with each other; and that, as the propositions in question all related to one sub-

[37] Koehler v. Hill, 60 Iowa, 543 (1883).
[38] Eason v. State, 11 Ark., 481 (1851).
[39] State v. Mason, 43 La., Ann. 590 (1891).
[40] Hatch v. Stoneman, 66 Cal., 632 (1885).

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ject, and were designed to effect a change from annual to biennial sessions of the legislature, the amendments were properly submitted and adopted.[41]

A case somewhat similar in principle has recently been decided in Illinois. Article 14 of the constitution prohibits the general assembly from proposing amendments to more than one article at the same session. In November, 1905, a proposed amendment to article 4 (which relates to the legislative department), empowering the legislature to provide by special act a new charter for the city of Chicago, was submitted to the people and ratified. The validity of the amendment was attacked on the ground that it not only affected article 4 but also article 6, relating to the judiciary, and article 9 relating to revenues, and, constituting in effect three amendments, was not properly submitted. The Supreme Court, however, sustained the validity of the amendment, holding that it embraced but one general subject, namely, the establishment of a local municipal government for Chicago, and was designed to accomplish but one object, namely, to confer additional power upon the legislature.[42]

The Supreme Court of Mississippi, in 1900, took a different view of a similar question and held that a proposed amendment, which sought to establish an elective judiciary in place of an appointive one, affected several articles of the constitution (although only incidentally) and was in effect four amendments. Not being submitted separately, as required by the constitution, the amendment was held invalid.[43]

The question of the extent of the popular majority

[41] State *ex. rel.* Hudd v. Timme, 54 Wis., 318.
[42] Illinois v. Reeves, decided February, 1906.
[43] State v. Powell, 77 Miss., 543.

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required to ratify came up before the Supreme Court of Indiana in the early eighties. The constitution of that State requires the approval of a "majority of the electors" before any proposed amendment shall be considered valid. In 1880, an amendment was submitted to the voters, and of 380,470 votes cast at the election, 164,483 were for the amendment and 152,251 against it. A majority of those voting had cast their votes for the amendment, but they were not a majority of the electors of the State. The question of the validity of the proposed amendment being taken to the Supreme Court of the State, it was held that a "majority of the electors," as the term is used in the constitution, means more than half of the qualified voters of the State, and not simply a majority of those cast on the question of amendment or of those voting at the election. The amendment, therefore, was declared to have been defeated.[44] A decision has recently been rendered by the Mississippi Supreme Court holding that a majority of those voting means a majority of those voting at the election at which the amendment is submitted, and not merely a majority of those voting on the amendment.[45]

## OBSERVATIONS AND CONCLUSIONS

The results of more than a century's experience seem to have removed from the domain of controversy several questions concerning the procedure of constitutional revision. First of all, the advantage, not to say necessity, of pointing out in the constitution itself the amending authority, and of indicating a method of procedure, is now universally recognized and observed in practice. The

[44] State v. Swift, 69 Indiana, 505. This decision was reaffirmed by the Supreme Court of Indiana in 1901 in the case of *In re* Denny 59, N. E. Rep., 359.

[45] State v. Powell. 77 Miss., 543 (1900).

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distinction between legal amendment and revolutionary change is now so well understood that no State fails to guard against the latter by providing for the former. In the second place, the advantage of providing a double mode of procedure, one for general revision, the other for specific alterations, is hardly open to question, although for some reason thirteen States still cling to the single method. Thirdly, if only one method of procedure is provided, it should be through the agency of the legislature and the referendum, and not the convention. The New Hampshire method by which constitutional changes, whether few and unimportant or the reverse, can be effected only through the agency of a convention, and which in the end requires the concurrence of two successive sessions of the legislature and two recourses to the referendum, does not seem adapted to present conditions. Besides being uneconomical, it is cumbersome and unwieldy, and, therefore, conducive to revolution. All efforts to adopt a simpler, more expeditious and cheaper mode of amendment in this State have resulted in failure. Adopted in 1792 it has, in fact, been changed but three times in the course of 115 years. Fourthly, the amending power should not be conferred on the legislature without the subsequent participation of the electorate through the referendum. At present, Delaware is the only State whose constitution permits this. The formalities of an extraordinary vote, publication, and passage by two legislatures, do not make up for the absence of the referendum. A written constitution should proceed not from any branch of the government but direct from the people represented in constituent assembly or at the polls. Fifthly, the legislature should not be required to call a convention at stated times without the approval of the electorate upon referendum. This is no longer required

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by the constitution of any State. The legislature, however should be required to take the sense of the people at reasonable intervals on the question of calling a convention to revise the fundamental law. To submit such a question every seven years, as is required in New Hampshire, seems rather too often, but so long as the legislature of that State is not empowered to initiate amendments itself, it will probably be desirable. The Maryland and New York provisions for a compulsory referendum on the question once every twenty years, or about once in the lifetime of a generation, would seem to be sufficient. The legislature should also be empowered, at its discretion, to take the sense of the people on the question of calling a convention whenever it deems a revision desirable or necessary, and the constitutions of nearly two-thirds of the States permit this. The provisions in Maine and Georgia, which give the power to call a convention to the legislature without a referendum on the question, are hardly in accord with American ideas and practices; but, in view of the increasing tendency to degrade the constitution to the position of a code of private law, and the consequent necessity for frequent amendment, the practice of waiving the referendum in such cases will probably grow in favor. The Kentucky provision, on the other hand, which requires the concurrence of two successive legislatures and the approval of the electorate to call a convention, goes to the other extreme and renders needed revisions difficult, and, besides, the procedure is too slow for growth and progress.

A just criticism of some of the amending clauses is their exceeding brevity. A few of the constitutions empower the legislature to call conventions without making any provision for the number of delegates, their qualifications, manner of election, compensation, organization of the convention, etc., everything being left to the legislature. The

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history of constitution making in more than one State shows that these are matters which, in their broader outlines at least, should be provided for in the constitution itself. The new provision in the New York Constitution is a notable example of what has been said above. By the constitution of that State the participation of both executive and legislature in constitution making is, as already remarked, reduced to a minimum. No legislative act is necessary to bring the convention into existence when once the people have voted in favor of revision. Moreover, the constitution itself fixes the number of delegates, the time and method of choosing them, their qualifications and compensation, the time and place of the meeting of the convention, the number of delegates necessary to make a quorum, and even prescribes some of the rules of procedure. Such precautions intended to prevent the legislature from nullifying the popular will are not mere surplusage and deserve a more general adoption by the States. Another omission is the failure to make provision for the submission of the revised constitution to the people. Only about one-fourth of the constitutions now in force require this to be done, yet there is probably not a State in which a large majority of the electorate would not object to having a revised constitution put into operation without an opportunity to express their opinion on it through the referendum.

Concerning the methods of procedure prescribed for effecting amendments through the agency of the legislature, several criticisms may be made. In the first place, there seems to be no good reason for creating an inequality between the two houses in the matter of initiating amendments, as is done in Connecticut and Vermont, especially where, as in Connecticut, the approval of both

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houses of a subsequent legislature is necessary to the validity of the proposal. Nor does it appear why the majority required in one house should be larger than in the other. Certainly, the requirement that a proposal to amend shall be passed by a two-thirds majority of two successive legislatures before submission to the electorate, as is required in a number of States, seems too drastic in view of the increasing necessity for frequent amendment. Again, the requirement of most of the constitutions that proposed amendments shall be submitted to the voters at a *general* election has many times proved fatal to popular and much needed amendments. They often appear by title and number on large ballots containing a bewildering list of candidates, as a result of which they are frequently not understood and often they are entirely overlooked by the voter, whose chief interest is centered in the success of the candidates for whom he is voting. Thus the question of amendment is made subsidiary to that of the choice of candidates for office. The New Jersey requirement that proposed amendments shall be submitted to the voters at a *special* election, called for the purpose, is unique, and insures a consideration upon the part of the voter which it is impossible to secure at a general election. It may, however, prove impracticable for other reasons. Again, the common requirement that a majority of the electors, or a majority of those voting at the general election, instead of a majority of those voting on the amendment, shall be necessary to ratify, seems too drastic under existing conditions, and has defeated good amendments in several instances. Manifestly, it would be impossible to secure a majority of the electors for any amendment where, as is not infrequently the case, a large percentage of the voters

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do not go to the polls.[46] Likewise, it is frequently difficult to secure a majority of those voting at the election even for an amendment to which there is little opposition, because large numbers of those who vote at the election for the choice of officers do not vote on the question of amendment. Every two such votes is in effect one vote against the amendment, although not so intended. An illustration of the practical working of the requirement that proposed amendments, to be valid, shall be submitted to the voters at a general election and receive a majority of those voting at the election, may be found in a recent attempt to amend the Constitution of Illinois. At the general election of November, 1896, a proposition to increase the number of amendments which the legislature may propose at the same session from one to two, was submitted to the voters, but, owing to the conditions described above, hardly more than one-fifth of those who voted for presidential electors cast a vote either for or against the proposed amendment. Thus, it was overwhelmingly defeated, not because of opposition, but because of indifference, misunderstanding, and the distractions of the presidential election. Of those voting on the amendment, a large majority were in favor of its adoption, but they were in a hopeless minority as regards the

[46] Thus, at the general election of November, 1904, less than half of the registered voters of Mississippi went to the polls, and the proportion was but little larger in several other States. The New Orleans *Times-Democrat* complains bitterly that at the recent election (Nov., 1906) several far-reaching amendments were adopted in that State by a vote of one-sixth of the electorate. This criticism is not without weight, but in view of the fact that hardly more than one-half of the registered voters of La. have voted at the general elections in recent years, an absolute majority requirement would be prohibitory. At the recent election, an amendment was ratified in South Carolina by a vote barely exceeding eight thousand.

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total vote cast at the election.[47] At the general election of November, 1905, an amendment empowering the legislature to reorganize the government of the city of Chicago, whose charter the city had long ago outgrown, was submitted to the voters, and, although there was little opposition to the amendment, it required a long and strenuous campaign on the part of the citizens of Chicago to secure its adoption by a majority of the electors voting at the election. This requirement, together with another provision which prohibits the proposal of an amendment to more than one article at the same session, or the proposal of an amendment to the same article oftener than once in four years, makes the Illinois system of amendment one of the most archaic and cumbersome in the world, and has already retarded the progress of the commonwealth. The attempt to change this provision in the interest of flexibility and progress was defeated in 1896, mainly, as has been said, on account of the indifference of the voters; and, as a result of what seems conservatism gone mad, another amendment could not be proposed for four years. It is perfectly safe to say that the provision in question will remain in the constitution until eliminated by the act of a convention called for the purpose. Dicey's comparison of the amending power in the United States Constitution to a slumbering monarch whose activity can seldom be aroused except by the thunder of revolution certainly applies with equal force to the sovereignty in the State of Illinois as it is defined by the present constitution.[48]

[47] The total vote cast at the election was 1,090,869; for the amendment, 163,057; against it 76,519. A more recent instance of popular indifference in such matters is furnished by the State of Kansas where at the recent general election (Nov., 1906) of 300,752 votes cast for the head of the State ticket only 62,000 were cast on a proposition to amend the Constitution.

[48] Law of the Constitution, p. 137.

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Illustrations not very different from the above might be drawn from the recent history of other States. In Mississippi, for example, there has been for years a popular demand for a constitutional amendment providing for an elective judiciary. Such an amendment was submitted to the electors at the general election in November, 1900, but, like the Illinois amendment described above, it was defeated by the requirement that proposed amendments must receive a majority of the votes cast at the election instead of a majority of the votes cast for and against the amendment. In 1902, an amendment making a majority of those voting on the proposition to amend sufficient was submitted to the voters, but was defeated for the same reason that the judiciary amendment was. Now, after an interval of six years, a new proposal has been defeated by a single vote in the legislature. Such a requirement, coupled with popular indifference, has led to a virtual breakdown of the amending machinery in Indiana. At the general election of November, 1906, an amendment, which had for its purpose the establishment of reasonable qualifications for admission to the bar, was submitted to the voters, and out of nearly 600,000 votes cast at the election only 51,000, or about one-twelfth of the total, were cast on the proposed amendment. Of the votes cast on the proposal a large majority were in the affirmative, but they were far from being a constitutional majority. Almost every attempt to amend the constitution of this State for fifty years has resulted in failure.

Two other States in which the modes of constitutional amendment has given great dissatisfaction are Connecticut and Rhode Island. In both, all efforts to abolish the rotten borough system of representation in the legislature have failed. In Rhode Island, the basis of representation in the general assembly is, according to the statement of a

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recent governor, such as to give one-twelfth of the inhabitants of the State dwelling in towns more power in legislation than the remaining eleven-twelfths. The constitution possesses other defects, which in the language of the Rhode Island citizens' union, "has made possible the growth of a system of political corruption so widespread and so bad as to occasion, among thoughtful citizens of the State without regard to party, profound and increasing irritation." Yet, under the existing cumbersome method of amendment which restricts the power to initiate proposed changes to a legislative body which can hardly be called representative, and which requires the approval of two such bodies in succession together with the ratification of three-fifths of the voters voting on the proposed amendment, it has proved impossible to correct the evils concerning which there is widespread complaint.

In conclusion it may be asked whether, in the effort to prevent too frequent and ill-advised changes in the State constitution, the reactionary pendulum has not swung to the opposite extreme, and, instead of progress and growth, we are not confronted by constitutional stagnation, if not retrogression. The provisions for amendment in some of the existing State constitutions verge dangerously near the line of prohibition. The seriousness of the situation is increased by the fact that the American State constitution is no longer an instrument of public law, but is becoming more and more a code of private law also. Frequent alterations are, therefore, necessary if the fundamental law is to meet the shifting social and economic conditions of the State. A glance at the history of constitution making in the United States during recent years will reveal the transitory character of State constitutional law. During the decade from 1894 to 1904, eight States adopted new constitutions, two others had revised consti-

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tutions rejected, and three others voted for conventions to prepare revisions. During the same period, 412 amendments were formally proposed by the legislatures. Of these 230 were adopted and became parts of the existing constitutions, while 182 were rejected by the voters or not repassed by the legislature. New York, with a comparatively new constitution, proposed six; California, thirty-eight, of which twenty were adopted; Louisiana, twenty-two, of which fifteen were adopted; Missouri, twenty-one, of which fifteen were adopted; Florida, twenty-one, of which thirteen were adopted; Colorado, twelve; Michigan, sixteen; Oregon, eleven; Texas, twelve, New Hampshire, ten; and Nebraska, ten. At the general election of 1904, seventy-six amendments were submitted, of which Louisiana, with a constitution barely six years old, submitted fifteen. In November, 1905, thirty-four amendments were pending, of which New York, with a constitution but ten years in force, submitted twelve. At the recent general election (Nov., 1906) not less than sixty proposed amendments were referred to the people, and sixteen others were awaiting the action of legislatures now in session. Thus, in spite of drastic limitations the overhauling of State constitutions is going on at a rapid rate. A glance at the provisions of some of the amendments recently adopted, will show how much real statutory law is being engrafted upon the constitution. About one-half of them were designed to increase the power of the legislature in various particulars, thus showing the effect of unwise constitutional limitations. The powers conferred related to such subjects as the construction of drains, methods of voting, regulation of official salaries, regulation of conditions of employment, removal of dead timber, rules of legislative procedure, sale of lands, working of roads, and other similar matters which properly fall within the purview of

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the legislative power, and no constitutional amendment should be necessary to enable the legislature to regulate them. It is the mischievous custom of introducing into the constitution such statutory details that is responsible for this annual flood of amendments. The only escape is to return to the early practice of making the constitution what it should be—the strictly fundamental law of the State and leave the rest to the statutes.

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# NOTES ON CURRENT LEGISLATION

ROBERT H. WHITTEN

These notes relate to the legislation of Canada and of the Canadian provinces during 1906, to American legislation not mentioned in the REVIEW, vol. i, no. 1, and to constitutional amendments voted on at the November elections. The note relating to Insurance is contributed by Dr. Huebner; that on Municipal Affairs by Dr. J. A. Fairlie; and that upon Currupt Practices by Mr. G. L. Fox.

**Agricultural Education.** Georgia ('06, p. 77) has established eleven congressional agricultural high schools as branches of the State College of Agriculture to be under the general supervision of the board of trustees of the University of Georgia. Each school will receive from the State an equal share of certain inspection fees, amounting as now estimated to $6,000 per year, and the localities in which the schools are located must furnish not less than two hundred acres of land and the necessary equipment. It is contemplated that the boys will perform all the work on the farms and about the school property, and will receive wages from the proceeds of the farms.

New York ('06, ch. 682) has established the New York State School of Agriculture at St. Lawrence University at Canton. Eighty thousand dollars is appropriated for constructing and equipping a suitable building. Among the objects for which the school is created are the giving of agricultural instruction by university extension methods, the conduct of investigations and experiments, and the dissemination of agricultural knowledge by means of lectures and otherwise.

**Automobiles.** New motor vehicle acts have been passed in Ontario ('06, ch. 46) and Quebec ('06, ch. 13). Both of these acts contain the important provision that the chauffeur's license may be suspended or revoked for any violation of law.

**Barbers.** The Massachusetts State board of health has been instructed ('06, Resolve 96) to investigate the condition of barber

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shops and consider what legislation, for the licensing of barbers and the regulation of their business, is necessary for the protection of the public health.

**Blind.** Maryland ('06, ch. 290) has created a commission to improve the condition of the adult blind. This commission is to complete a census of the resident blind, including information as to the capacity of such blind persons for educational and industrial training. The commission is authorized to furnish tools, not exceeding $50 per person, and to place women in homes at a per capita cost of not to exceed $200.

New York ('06, ch. 671) has established a temporary commission to investigate the condition of the blind and to prepare a census stating the capacity of blind persons for industrial training and self-support; the commission is also to consider the advisability of establishing industrial training schools, and is to report to the legislature of 1907.

**Brazil's Valorization Scheme.** To help coffee planters, Brazil will, in accordance with the provisions of the law of August 6, 1906, purchase coffee at about eight and one-half cents a pound. The text of this act is not yet available and the facts given are from a statement in *Moody's Magazine*. It is proposed to purchase coffee on account of the three coffee producing Brazilian States, whenever the price of coffee falls below about eight and three-eighths cents a pound. Since 1901 the price of coffee has, with very few exceptions, been below the cost of production. The financing of the valorization scheme is provided for by the issuing of bonds by the three coffee producing States, guaranteed by the general government. To cover the redemption and interest of this loan, an export tax of about one-half cent a pound is to be levied.

**Constitutional Amendments.** A great many constitutional amendments are always submitted to the vote of the people in even numbered years, as most States hold their biennial general State elections in the even years. Comparatively few amendments are voted on in the odd numbered years. At the elections in 1906, sixty-nine constitutional amendments were voted on. These elections were all in November, excepting Oregon, in June; Arkansas, in September; and Georgia, in October. California submitted fourteen amendments, of which eight were adopted and six rejected; Louisiana, twelve, of which eleven were adopted and one rejected; Idaho, six, of which five were

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rejected and one adopted; Oregon, five, of which four were adopted and one rejected; Florida, five, all rejected; South Dakota, four, all adopted; Kansas, three, all adopted; Minnesota, three, two adopted and one rejected; Georgia, three, all adopted; Texas, three, one adopted, two rejected: Washington two, both rejected; Missouri two, both adopted; Arkansas, Colorado, Mississippi, Montana, Nebraska, North Dakota and Indiana, one each. Of the sixty-nine submitted in all the States, forty-five or about two-thirds were adopted and twenty-four or about one-third were rejected.

**Corporation Prospectuses.** Ontario ('06, ch. 27) has passed an act regulating prospectuses issued by companies. The amount or rate per cent of the commission paid on the sale of shares must be stated in the prospectus. No subscription for stock obtained by verbal representations shall be binding on the subscriber, unless, prior to so subscribing, he shall have received a copy of the prospectus. A copy of every prospectus must be signed by the persons named therein as directors, or proposed directors, and filed with the provincial secretary on or before the date of its publication. The prospectus must disclose among other things: particulars as to incorporators; qualification and remuneration of directors; names of directors; subscription upon which allotment may proceed; shares and bonds allotted for other than cash consideration; vendors of property to company; preliminary expenses; promoter's remuneration; particulars as to material contracts; names of auditors; interest of directors in property taken by company.

**Corrections.** In Maryland ('06, ch. 563) the governor has been authorized to appoint a commission of five persons to examine the working and practical results of laws providing for intermediate, indefinite and cumulative sentences in States where such laws have been enacted, and report as to the advisability of enacting similar legislation in Maryland. The same State has also provided ('06, ch. 807) for the appointment, by the governor, of a board of five commissioners to revise the laws relating to the care and detention of of minors and to juvenile courts. This commission is to report to the legislature of 1908.

**Corrupt Practices and Primaries.** Shortly after the adjournment in July, 1905, of the Connecticut legislature, which had passed a stringent corrupt practices law, and had provided for a commission of five members to investigate the whole subject of corrupt practices laws

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and primary laws, the government appointed as that commission, John H. Perry of Fairfield, chairman, Charles H. Clark of Hartford, Frank T. Brown of Norwich, Norris G. Osborn and Theodore H. McDonald of New Haven. The report which the commission submitted to the legislature of 1907, at its meeting in January, is, on the subject of corrupt practices, the most complete and scholarly report ever issued by a State of the United States.

It contains a summary of all laws on this subject existing in the world, gives the present law of Connecticut in full, with many of the important amendments recommended printed in black face type, and includes an argument in support of these amendments, together with the full text of a proposed primary law for enactment by the legislature. If the legislature shall adopt the amendments which the commission recommend, the Connecticut statute will then more nearly approach the English or Canadian model than almost any other in the United States.

Among the ten important reforms for making the act more stringent the following are the most important: All corporations, as well as all judges, except judges of probate, who are elected in Connecticut, are forbidden in any way to contribute to the campaign funds of political parties. The number of paid workers at the polls in each election district for any political party is limited to five with one additional worker for each two hundred voters registered in the district. Sworn statements of expenses are required not only from candidates for election, but also from candidates for nomination, and from delegates to nominating conventions, who are required to state who paid their traveling and other expenses, and, if they paid their own, who reimbursed them or promised to do so. All expenses for conveying voters to the poll are forbidden, except in the case of the sick and infirm. Under the present law, expenses are limited as to purpose, and, now it is proposed, still further to limit them in amount to $15 for each one thousand of the registered voters qualified to vote for the office in question at the last preceding election. Penalties against bribery on the part of the briber are strengthened, and witnesses in an election court are not excused from testifying for fear of incriminating themselves, but are guaranteed immunity from prosecution for such statements except for perjury. Any candidate for nomination or election, if found guilty of corrupt practices, shall be ineligible for public office for a period of four years, in addition to the penalty of fine and imprisonment.

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Probably the law requiring candidates to file sworn statements of their expenses within a certain period has been more rigorously enforced in Connecticut than in any other State, and, consequently, the law is more strictly complied with by candidates. On October 1, 1906, town elections in 160 towns were held, when the number of candidates in each town varied from twenty-eight to seventy-four. In 80 per cent of these towns there was complete compliance with the law on the part of candidates, and in only six was there any serious deficiency. In the November State elections for State officers and members of the State legislature not more than twenty candidates, mostly unsuccessful, failed to file their sworn statements, and these were duly prosecuted and fined. All these facts would seem to prove that the law of 1905 has been a distinct success and that public opinion demands still more stringent guarantees of the purity of elections.

The main features of the direct primary nomination law, recommended to the legislature for adoption by the commission, are as follows: It is limited in application to the offices of governor, lieutenant-governor, representatives in Congress, State senators and representatives, judges of probate, sheriffs and any candidate for city or borough offices to which election is by ballot. Provision is also made for nominations to the United States Senate, "to the end that the members of the general assembly may become acquainted with the wishes of the electors," but the final choice of course is determined by the legislature.

The time for city and borough primaries is fourteen days before election and the time for State and Congressional elections is the first Monday in October. As this is the regular day for town elections in Connecticut, voters will, at the same time, elect town officers and then nominate candidates for State officers, the legislature, and Congress. Sixty days before these primaries, public notice of the offices for which nominations are to be made, must be given, and the nomination papers must be signed by electors who declare that they intend to support the party at the coming election. Nominations will not be considered complete until payments have been made according to a regular scale of valuations, beginning with $250 for the highest office and running down to $10 for the lowest.

In order to be voted for at the primary elections, nominees must be supported by signers, whose number equals 1 per cent of the total

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vote of the party in the case of officers voted for by the whole State; 2 per cent for district representatives in Congress; 3 per cent in case of offices involving a less area, the standard for such offices being the vote of the party candidate receiving the largest vote at the last election. Any party, whose candidates received 1 per cent of the total vote at the last preceding election, may have a separate column on the primary election ballot, and independent candidates may secure a place by nomination papers on the same basis of percentage.

To secure the nomination, a candidate must have received 30 per cent of all votes cast for the party or independent ticket on which he ran. In case of failure to nominate, vacancies may be filled by any method prescribed by the State central committee of the party. In case of a tie the matter is decided by lot. Nominations by petition outside of the primary elections may be secured by the signatures of 1000 voters and such nominees are to be placed on the regular ticket.

**Courts.** New Brunswick has reorganized its judicial system. It has abolished the supreme court, circuit courts, all courts of oyer and terminer and general gaol delivery, and the supreme court of equity. In the place of these courts has been created one supreme court of judicature, which consists of two divisions, the court of appeal and the trial division. The court consists of a chief justice and five judges. The chief justice and two judges form the court of appeal, and the three remaining judges form the trial division. Persons to be appointed judges must be barristers-at-law of at least ten years standing at the bar of New Brunswick.

Georgia adopted in October, 1906, a constitutional amendment establishing a court of appeals and revising the jurisdiction of the supreme court,

Louisiana adpoted an amendment in November, 1906, revising the articles of the Constitution of 1898, relating to courts of appeal.

**Direct Legislation.** The Delaware legislature submitted to referendum vote the question, "Shall the general assembly of the State of Delaware provide a system of advisory initiative and advisory referendum?" At the election held in November, 1906, a majority voted in favor of this proposition.

Montana, at the election in November, 1906, adopted a constitutional amendment establishing the initiative and referendum. For the initiative a petition signed by 8 per cent of the legal voters of the State is required. This must include 8 per cent of the voters in each

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of two-fifths of the counties. The initiative petition must include the full text of the measure proposed, and must be filed with the secretary of state not less than four months before the election at which it is to be voted on. The referendum petition must be signed by 5 per cent of the legal voters of the State, including 5 per cent of the voters in each of two-fifths of the counties. The referendum petition shall be filed with the secretary of state, not later than six months after the adjournment of the legislature. Any measure referred to the people shall still be in full force and effect unless the the referendum petition be signed by 15 per cent of the legal voters of a majority of the whole number of counties, in which case the law shall be inoperative until such time as it shall be passed upon at an election. The veto power of the governor shall not extend to measures referred to the people by the legislature, or by initiative or referendum petitions. The initiative and referendum do not extend to laws for the appropriation of money, for the submission of constitutional amendments or to local and special laws.

**Direct Nominations.** Louisiana ('06, ch. 49) passed a general primary election law. Nominations for State and municipal officers and for United States Senators and Representatives are to be made by direct vote at the primary. The State central committee of each party is authorized within sixty days of the promulgation of the act to fix political qualifications for voting at the party primary. It is prescribed, however, that no person shall be permitted to vote unless he shall state that he is a member of the political party and that he will support the candidates nominated at the primary. Part of the expenses of the primary are borne by the State or the local authorities, and part by the candidates. Official ballots are provided by the secretary of state for State officers and United States Senators and Congressmen. Ballots for all other offices are furnished by the party committees. If any candidate fails to receive a majority of the votes cast, a second primary is held four weeks from the date of the first primary. At this second primary, only the two highest candidates are voted on. The State central committee and the various local committees are recognized as the governing authorities of the party. The State central committee is authorized to regulate the organization of local committees. The members of all local committees are elected at the direct primary. The State central committee consists of one member from each parish, one member from each of the wards

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of the parish of Orleans, and three members at large from each Congressional district, elected at the primary.

**Education.** Ontario ('06, ch. 52) has revised its laws relating to the department of education. There is a minister of education and also a superintendent of education. The superintendent is appointed by the lieutenant-governor-in-council and holds office during the pleasure of the appointing power. The department has power to make regulations on a great variety of subjects. There is also an advisory council of education composed of twenty members. The advisory council is intended as a consultative committee to confer with the minister of education. The minister of education has power to apportion all grants of public money for public and separate schools. He shall divide the total of the amounts apportioned to each municipality between public and separate schools according to the average number of pupils respectively attending such schools. Ontario has also ('06, ch. 53) very generally amended its public schools act.

Nova Scotia ('06, ch. 7) has established a teachers' pension system. Teachers who have taught in the public schools for thirty-five years, or who have attained the age of sixty years after thirty years of service, are entitled to retire with an annuity equal to the provincial aid granted to such teachers, but no teacher may receive more than $150 per annum. Teachers after twenty years of service, becoming totally disabled or incapacitated, may be retired on the same annuity. Local school authorities may supplement such annuities under regulations approved by the provincial council.

Kentucky ('06, ch. 102) has established two State normal schools. These institutions are to be under the general supervision of the normal executive council, consisting of the superintendent of public instruction and the executive officers of the two schools. This council is to prescribe terms of admission, conditions of graduation, and courses of study.

**Electrical Power.** Ontario ('06, ch. 15) has created a permanent hydro-electric power commission. Any municipal corporation may apply to the commission for the transmission to such corporation of electric power for its use and that of its inhabitants, for lighting, heating, and power purposes. The commission may contract with such muncipality for the furnishing of power. The commission may also supply power to railways and distributing companies. The commission may acquire by purchase with or without

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the consent of the owners, lands and works for the development of water power, the plant and property of transmission companies, or the power developed by waterpower companies.

**Electricians.** Maryland ('06, ch. 244) has provided for the regulation and licensing of electricians in the city of Baltimore. The board of electrical examiners is appointed by the governor. This board is to license, on examination, master electricians engaged in installing electric apparatus.

**Feeble Minded.** Massachusetts ('06, ch. 508) has established a school for feeble minded. This institution is to maintain a school department for the instruction of feeble minded persons who are within the school age, and a custodial department for the custody of feeble minded persons beyond the school age, or such as are not capable of being benefited by school instruction.

**Fire Marshal.** Manitoba ('06, ch. 28) has amended the fires prevention act with relation to the powers and duties of the fire commissiner. The fire commissioner has the uusal powers of a fire marshal in the American States. He may also investigate the cause and origin of any prairie fires.

**Forestry.** Ontario ('06, ch. 42) for the purpose of fostering the growth of trees authorizes the council of any town to exempt woodlands from municipal taxation. It is provided, however, that not more than one acre in ten of such woodlands shall be exempt, and not more than twenty-five acres held under a single ownership shall be so exempt. The term "woodlands" is carefully defined.

In order to encourage the preservation and planting of forests, Iowa ('06, ch. 52) has provided that forest reservations fulfilling prescribed conditions, shall be assessed on a valuation of $1 per acre. The forest reservation must contain not less than 200 trees to the acre. Not more than one-fifth of the total number of trees on a reservation may be removed in any one year. The secretary of the Iowa State Agricultural Society is made State forestry commissioner.

Maryland ('06, ch, 294) has established a State board of forestry. The board is to consist of five *ex officio* officers and two citizens appointed by the governor. A State forester is to be appointed by the board, at a salary not to exceed $2,000. The beginnings of a State forest reservation are provided for and regulations are prescribed to prevent forest fires.

Canada ('06, ch. 14) has established dominion forest reserves in the

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provinces of Manitoba, Saskatchewan, Alberta, and British Columbia. These reserves are placed under the control of the superintendent of forestry. Rangers are to be appointed to protect the forests from fire.

New Brunswick has passed an act ('06, ch. 31) for the regulation of the public timber lands, and the encouragement of the lumbering districts.

**Gypsy Moth.** In spite of the efforts Massachusetts has been making in the last ten years to rid itself of the gypsy and brown-tail moths, the pest appears to be gradually spreading. Rhode Island has now found it necessary to provide for the appointment of a commission to suppress and exterminate the gipsy and brown-tail moths. $5,100 is appropriated.

**Immigration.** Canada ('06, ch. 19) has passed an act regulating immigration. Medical inspection is provided for and the following classes are prohibited from landing: Feeble minded, epileptic, and insane; paupers, vagrants and others, who are likely to become a public charge, and any person becoming a public charge within two years may be deported; persons convicted of crime and prostitutes; persons deaf, blind or infirm may not be admitted unless belonging to a family that accompanies them or one that is already in Canada giving satisfactory security for their permanent support. The governor in counsel may by proclamation or order also prohibit the landing in Canada of any specified class of immigrants, due notice of which shall be given to the transportation companies.

**Industrial Education.** Massachusetts ('06, ch. 505) has created a permanent State commission on industrial education. The commission consists of five persons, appointed by the governor and council, for the term of three years. The commission may employ a secretary, supervisors and experts in industrial and technical education. The commission may investigate methods of industrial training and advise and aid in the introduction of industrial education. It may initiate and superintend the establishment and maintenance of industrial schools, with the coöperation and consent of the muncipality involved, or of the muncipalities contained in any district formed by the union of towns and cities. Money appropriated by the State and municipality for the maintenance of such schools is to be expended under the direction of the commission.

Cities and towns may provide independent industrial schools for

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instruction in agricultural, domestic and mechanic arts. But attendance upon such schools of children under fourteen shall not take the place of the attendance upon the public schools required by law. In addition to these industrial schools, "cities and towns may provide for evening courses for persons already employed in trades, and they may also provide in the industrial schools and evening schools herein authorized for the instruction in part time classes of children between the ages of 14 and 18, who may be employed during the remainder of the day, * * * * to the end that instruction in the principles and the practice of the arts may go on together."

Whenever any city or town appropriates money for the establishment and maintenance of an independent school, the commonwealth will appropriate State funds to its support as follows: (1) Cities and towns expending for school purposes more than $5 on each $1,000 of the assessed valuation, are to be reimbursed by the commonwealth to the amount of one-half; (2) those expending between $4 and $5 per $1,000 of the assessed valuation are to be reimbursed to the amount of one-third; (3) those expending less than $4 per $1,000 assessed valuation are to be reimbursed to the amount of one-fifth of the cost of maintaining industrial schools. The commission is to report annually to the legislature, and it is to consider and report at an early date on the advisability of establishing one or more technical schools or industrial colleges providing for a three or four years' course for extended training in the working principles of the larger industries of the commonwealth. The Massachusetts Agricultural College is authorized to establish a normal department for the purpose of giving instruction in the elements of agriculture to persons desiring to teach such elements in the public schools.

**Insurance Legislation During the year, 1906.** The insurance legislation of 1906, as embodied in the series of laws enacted last April by the New York legislature, contains provisions for the regulation of life insurance companies, more revolutionary and far-reaching than any that have ever been applied to any important American business. So honeycombed were the largest life insurance companies with dishonesty and wastefulness that the New York legislative investigating committee was bent upon recommending reforms so sweeping and thorough as to render for ever impossible a repetition of the disgraceful conduct laid bare in the investigation. With few exceptions, the recommendations of the committee were placed upon the statute

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books. Not only do the New York laws work a complete revolution in the business of life insurance, but, as regards many provisions, they apply to all the business of the numerous foreign companies seeking to transact business in that State. Throughout the country, also, conventions and associations are lending their support to the enactment of the New York laws in other States; and there is reason to believe that before long, the wholesome effect of these laws will make itself felt throughout the length and breadth of the land. Beyond doubt, the New York legislation has reëstablished the principle, almost forgotten, that the vast sums of money held by insurance companies as trust funds are the property of the policyholders and not the property of the stock holders, officers and directors.

Officers and directors may no longer be pecuniarily interested in any purchase, sale or loan to which the company is a party; nor may the officers of the company participate any longer in underwriting profits as was so frequently done in the past. Political contributions are considered unlawful in any form. Lobbying is carefully regulated by providing that the lobbyist shall file papers in the office of the secretary of state, stating his name, the name of his employers, and giving a description of the legislation in reference to which his services have been secured. Bonuses and rewards for the securing of large business are henceforth illegal; while rebating—that contemptible practice of dividing the premium between agent and policyholder—is prohibited, and made a misdemeanor for both agent and insured. The abuse of granting excessive salaries to officers is remedied by providing that no salary or other payment can be made which amounts in any one year to more than five thousand dollars, unless such payment be first authorized by vote of the board of directors, and, furthermore, no agreement for any such salary or emolument may be entered into by any company for a longer period than one year, nor may any pension be granted hereafter to any officer, trustee or director, or to any member of his family.

A most important feature of the recent New York legislation is the detailed provision for the election of trustees by the policyholders. The law is designed to give one vote to every policyholder whose insurance has been in force one year, irrespective of the number of policies he may hold. To render more difficult the advantages of life insurance managements in controlling elections, provision is made that full lists of all policyholders entitled to vote must be filed with the com-

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missioner of insurance at least five months prior to election, and must be accessible to policyholders for campaign purposes. Going along with this provision are the numerous detailed provisions for greater publicity. Accurate concise and complete statements are called for. A standard policy is also established, so that there may be no misunderstanding as to its terms and no shrewd practices directed against policyholders who, generally speaking, are not acquainted with life insurance and seldom read their policies carefully.

Among the numerous other sections of the New York law should be mentioned those pertaining to the limitation of expense in procuring new business and the regulation of life insurance investments. In probably no other respect have the life insurance companies sinned so grievously as in their wasteful expenditure of surplus funds for the securing of new business and their reckless handling of their assets. To overcome the first abuse, the New York law seeks to bring the extravagant companies to the footing of the more economical. It provides that hereafter no company may expend (1) for commissions on first year's premiums; (2) for compensation, not paid by commissions, for services in obtaining new insurance exclusive of salaries paid in good faith for agency supervision, either at home offices or branch offices; (3) for medical examinations and inspection of proposed risks, and (4) for advance to agents, an amount exceeding the aggregate loading upon the first year's premium plus the value of the mortality gain for the first five years of the life of the policy. In the words of the investigating committee: "If this standard had been applied to the entire group of thirty-two companies with reference to all the business except industrial, their entire expenses would have amounted, in 1904, to only $31,904,771, or $23,110,507 less than had actually been expended. Under such a limitation this great sum would have been saved for policyholders, amounting to an addition of about 30 per cent of the surplus earnings of the year."

To make all attempts at evasion impossible, all prizes, rewards or additional compensation upon the volume of business are also prohibited. Renewal premiums are definitely limited in amount, and, most important of all, a limitation is placed upon the amount of new business which a company may acquire in any one year. At present, no company may write annually more than $150,000,000 of new business.

To properly regulate life insurance investments, the law prohibits

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all companies from investing in the stock of any corporation or in bonds secured to the extent of more than one-third of their value by corporate stocks. Nor may life insurance companies make any loans upon stocks and bonds which they are prohibited from purchasing. To enforce this law it is also enacted that all stocks and bonds, the purchase of which is prohibited by the new legislation, must be disposed of within five years from December 31, 1906. Hereafter, no company may enter into any transaction for purchase and sale on joint account or any agreement by which any securities may be withheld from sale for any time or made subject to the discretion of others. Investments in real estate, so flagrantly misused in the past, are carefully regulated, and hereafter no company may hold real estate which is not necessary for the convenient accommodation of its business.

Viewed in its entirety, the law of New York has gone far in the right direction. The expenses for new business have been properly limited, the conduct of the officers has been properly safeguarded, and the trust funds and dividends of policyholders have been protected. Some loophole for evasion may present itself to the fertile brains of the crafty. Yet the work accomplished by the insurance investigation has been timely and great, and has come to stay. Let us hope that its good features will be incorporated in the laws of other States.

**Land Drainage.** The question of the reclamation of overflowed and marsh lands is receiving increasing attention in many States. Certain States find it necessary to adopt constitutional amendments to permit the establishment of drainage districts, the taking of private property for drainage purposes and the levying of special assessments to cover the cost of the improvement. South Dakota has adopted a constitutional amendment of this character. Florida rejected a constitutional amendment providing for the creation of drainage districts. Iowa has referred to the legislature of 1907 an amendment empowering the legislature to regulate the construction of drains across private lands and to provide for the organization of drainage districts.

**Legislature.** In California an amendment was rejected in November, 1906, fixing the salary of a member of the legislature at $1,000 and providing that no bill shall be introduced after the first forty days of the session, except by three-fourths vote. The present constitutional provision fixes the compensation at not exceeding $8 per day for not more than sixty days, and provides that bills may not be

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introduced after the first fifty days except with the consent of two-thirds of the members.

In Texas a somewhat similar proposition was rejected. The proposed amendment, submitted in November, 1906, provides that members shall receive $1,000 for the year in which the regular session is held, and $5 a day during special sessions held in other years than that in which the regular session comes. The present constitution provides for a compensation of $5 per day for the first sixty days of each session, and after that not exceeding $2 a day. The proposed Texas amendment also prohibited the acceptance of passes and franks by members of the legislature.

**Liquor Laws.** Ontario ('06, ch. 47) has revised its liquor license laws. An interesting provision relates to bartenders' licenses. No person may be employed or act as bartender without a license. The license may be issued only to persons of twenty-one years of age and of good character. It may not be issued to a woman. The license must be renewed annually and a fee of $2 is charged. The license of any bartender committing any offense under the act may be revoked, and upon a second offense a bartender becomes ineligible to hold a license for a period of two years. The liquor license rates range from $1,200 to $120, according to population. The council of any municipality may, however, by a by-law and by a vote of the electors increase these rates. The sale of liquor between seven p. m. Saturday and six a. m. Monday is prohibited.

**Marriage.** In Manitoba an act was passed ('06, ch. 41) relating to the solemnization of marriages. Marriages may be solemnized by ministers and clergymen, and they are also authorized to issue marriage licenses. Unless a dispensation from such publication is granted by the head of the church or congregation, the license may not be issued unless the banns have been published in church on two Sundays immediately preceding. Marriages may not be celebrated between ten p. m. and six a. m., except under exceptional circumstances.

**Municipal.** Some State legislation on municipal government, enacted in the early part of 1906, but not noted in the previous issue of this REVIEW, will be briefly mentioned. In New York, a general revision of the uniform charter for cities of the second class was passed. This made only minor changes, in such matters as salaries, to adjust the law to the wishes of Yonkers and Schenectady which have attained the population of cities of the second class. The new

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act also consolidated the various amendments that have enacted since the original charter was passed in 1898. At the same time a special act was passed, establishing a park commission for Syracuse, one of the cities of the second class. And an amendment to the New York Constitution has been proposed, changing the population limits for cities of the first and second class, so that Rochester may become a city of the first class, which will make it easier to secure special legislation for that city.

A Pennsylvania act providing for the consolidation of contiguous cities, and intended to bring about the union of Pittsburgh and Allegheny was adopted by a majority of the joint vote as provided in the act, although Allegheny voted against the union. But the actual consolidation of governments has been delayed by litigation testing the constitutionality of the law.

Iowa has provided for a uniform system of municipal accounts and financial reports, and for a biennial examination of municipal accounts in all cities of 5000 population or more, which may be extended to smaller cities on application. The work is to be carried out under the direction of the auditor of State. In New York, means have been provided for carrying out the law requiring uniform financial reports from cities of the second and third class, by authorizing the appointment of a chief accountant and two examiners in the office of the State comptroller.

Besides the usual list of measures providing for petty additions to municipal functions, a few acts of broader scope have been passed. In Louisiana, two constitutional amendments were adopted in November, one extending bonding powers to school and sewerage districts, and another authorizing the city of New Orleans to issue $8,000,000 in bonds for public improvements. In Iowa, all cities are now authorized to borrow money to construct electric, gas and heating plants; and the debt limit for this and other purposes has been increased from two and a half to five per cent. In New Jersey, all cities have been authorized to maintain and operate light, heat and power plants, within a bond limit of one per cent, after a referendum vote.

New Jersey has established three commissions to investigate various municipal problems, and report to the legislature in 1907. One is considering the general system of municipal government; another the feasibility of a law for a division of profits of public utility corporations between the corporations and the municipalities;

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and the third the advisability of legislation authorizing municipal lighting and power plants.

Important laws on municipal affairs have been enacted during the past year by several of the Canadian provinces. In Ontario, a general revision of the railway act contains a considerable number of sections on street railways, including the restriction of street railway franchises to a maximum of twenty-five years, with a provision for purchase by the city on payment of the actual value of the plant without including anything for the franchise. Another act of the same province establishes a railway and municipal board to exercise supervision over railways and municipalities. In reference to the latter the powers of this board deal specially with the alteration of municipal boundaries and the approval of local by-laws.

Manitoba has authorized municipal telephones, and requires each municipality to hold a referendum vote to determine whether the authority will be exercised. The price to be paid for purchasing an existing system is to be present value, and ten per cent in addition. The government of Manitoba guarantees municipal debentures issued for municipal telephones and also for gas and electric light works.

British Columbia has made a general revision of the municipal code, under the title of the municipal clauses act, which regulates in detail the government, procedure and corporate powers of municipalities.

**Officers.** Missouri adopted a constitutional amendment in November, 1906, increasing the term of the sheriff and the coroner from two years to four years, and making them eligible for re-election. Formerly they could hold office during four out of six years.

**Passes.** In Nova Scotia ('06, ch. 25) every railway company is required to furnish free transportation to members of the legislative council and house of assembly.

**Practice of Law.** Indiana again rejected in November, 1906, a constitutional amendment permitting the legislature to prescribe requirements for admission to the bar. The present constitutional provision on this subject is as follows: "Every person of good moral character being a voter, shall be entitled to admission to practice law in all courts of justice."

New Brunswick has passed an act ('06, ch. 5) permitting women to be admitted to the study and practice of law.

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**Proportional Representation.** A circular issued by the British Proportional Representation Society, dated November 7, 1906, states that proportional representation has been embodied in the new Finland Constitution and that the Swedish government has pledged itself to introduce a proportional representation bill. The Tasmanian government, whose proportional representation bill last year passed the lower house, has again brought forward the project.

**Public Aid to Railroads.** Idaho rejected a constitutional amendment, submitted in November, 1906, to permit the exemption from taxation for ten years of railroads hereafter constructed. The same State also rejected a proposed amendment permitting localities to vote donations to railroads or works of internal improvement.

**Public Deposits.** A California constitutional amendment adopted in November, 1906, provides that money belonging to the State or to a county or municipality, may be deposited in banks, under such conditions as the legislature may prescribe, subject to the following express regulations: (1) The Bank shall furnish as security bonds of the United States, California, or of any county, municipality or school district in California, to an amount equal in value to at least ten per cent in excess of the amount deposited; (2) the bank shall pay interest at not less than two per cent per annum on daily balances; (3) such deposit may not exceed half the paid up capital stock of the bank; (4) no officer shall deposit more than 20 per cent of the moneys available for deposit in any one bank, if there are other qualified banks requesting such deposits.

**Public Documents.** The Massachusetts legislature has authorized ('06, r. 57) the secretary of the commonwealth, the commissioner of public records and the State librarian to investigate and report on the use and preservation of State publications distributed to cities and towns of the State. The commission is to consider what measures, if any, should be taken to ensure the safekeeping of such publications in places where they will be accessible to all citizens of the State.

**Public Health.** The Mississippi State board of health has been authorized ('06, ch. 112) to prepare rules and regulations governing the proper disinfection and sanitation of public buildings, railroad depots, railway coaches and sleeping cars. The board is empowered to prescribe a sanitary code, containing regulation for the improvement of hygienic and sanitary conditions of such buildings and cars.

A Maryland law ('06, ch. 124) provides that whenever the State

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board of health shall have reason to believe that any local registrar of vital statistics does not make full and complete records the board may, after giving thirty days' notice, take charge and operate the local registration office for a period of three months. In case the registration by the State board shall exceed by 10 per cent the registration of the local registrar in corresponding months of the preceding year, the expense shall be paid by the local board.

The Massachusetts State board of health has been directed ('06, Resolve 59) to investigate what unwholesome changes, if any, take place in the flesh of poultry shipped or stored undrawn.

Iowa ('06, ch. 120) and Maryland ('06, ch. 308) have established State tuberculosis sanatoriums. Massachusetts ('06, Resolve 102) has provided for a special commission to consider measures for the relief of consumptives in an advanced stage of the disease, and the advisability of establishing State hospitals for their treatment.

Canada ('06, ch. 24) has passed an act relating to leprosy, and providing that the governor-in-council may by proclamation establish, as a lazaretto for lepers, any institution devoted to the care and treatment of persons afflicted with leprosy.

Nova Scotia ('06, ch. 22) has provided for the inspection and regulation of slaughter houses, dairies and creameries, under the supervision of the local board of health. The same act makes it unlawful to sell ice for domestic use which shall have been taken from water "which is defiled by sewage, garbage, ashes, refuse or waste from any industry, or any other condition likely to make the ice impure, which is obtained from such water, or is liable to produce disease." This provision, however, does not apply to ice used solely for cooling purposes, and not used for human consumption.

**Public Lands.** The New Jersey Legislature appointed a special committee to investigate the entire subject of the granting by the State of leases of riparian lands. ('06, p. 742.)

**Railroad Rates.** Maryland ('06, ch. 472–1–2) has prescribed maximum rates for all common carriers for carrying milk and cream for distances not exceeding fifty miles. It is also made a misdemeanor for any common carrier to refuse to receive milk or cream in units of two, three, five, seven or ten gallons.

Ohio ('06, p. 342) passed a general act to regulate railroads and other common carriers, modeled quite closely after the Wisconsin act of 1905. The act creates a railroad commission consisting of three

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members appointed for six years by the governor and Senate at a salary of $500 each. The office of commissioner of railroads and telegraphs created in 1867 is abolished. Street and electric railroads are excepted from the provisions of the act. The act is one of considerable length and contains provisions designed to prevent unreasonable rates, unjust discrimination, and to insure an adequate railroad service. Schedules of rates must be filed with the commission and after filing may not be changed except on ten days' notice to the commission. The commission is given power to enforce reasonable regulations for furnishing cars to shippers and for the loading and unloading thereof. The commission may, on its own motion, investigate the reasonableness of any rate and make like orders in respect thereto, as if such investigation had been made upon complaint. Rates, fares, classifications, etc., fixed by the commission are *prima facie* lawful. Any railroad or other party in interest may appeal to the court of common pleas. In such appeal, however, "the burden of proof shall be upon the plaintive to show by clear and satisfactory evidence that the order of the commission complained of is unlawful or unreasonable as the case may be."

**Salaries.** California adopted a constitutional amendment in November, 1906, fixing the annual salary of justices of the supreme court at $8,000 and that of justices of the district courts of appeal at $7,000. The same State rejected an amendment increasing the salary of the governor from $6,000 to $10,000; that of the attorney-general from $3,000 to $6,000, and that of the secretary of state, the comptroller and the surveyor-general from $3,000 to $5,000.

Florida rejected a constitutional amendment increasing the salary of supreme court judges from $3,000 to $4,000, and circuit surrogate judges from $2,500 to $3,500.

Louisiana adopted a constitutional amendment increasing the salary of the attorney-general from $3,000 to $5,000.

**Taxation.** Minnesota has found its constitutional restrictions relating to taxation exceedingly inconvenient in its attempts to reform and modernize its tax system. It has now adopted an amendment revising and liberalizing these restrictions. The new amendment provides that "the power of taxation shall never be surrendered, suspended or contracted away. Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes." Certain exemptions from taxation are authorized, and it

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is provided that the legislature may authorize municipal corporations to levy and collect assessments for local improvements upon property benefited thereby, without regard to cash valuation.

Louisiana ('06, ch. 191) provided for the appointment by the governor, of a special tax commission, consisting of fifteen members. This commission is to investigate the subject of taxation, and to report to the governor within a year.

Manitoba ('06, ch. 53) has provided for the substitution of a business tax for the existing personal property tax at the option of the council of any town or village. The business tax may be imposed upon all trades and occupations. It is to be based upon the annual rental value of premises occupied and may not exceed twelve and one-half per cent of such annual rental value.

Quebec has revised its tax law relating to commercial, manufacturing, banking, insurance and public service corporations. The taxes are based on capital stock or gross receipts, supplemented by an additional fixed amount for each place of business, factory or branch office.

Louisiana adopted in November, 1906, a constitutional amendment providing for the election by the people of assessors and tax collectors for New Orleans. Under the Constitution of 1898, art. 309, they were appointed by the governor.

**Taxation of Mortgages.** California adopted a constitutional amendment in November, 1906, repealing §5, art. 3 of the Constitution of 1879, which declared illegal all contracts for the payment by the mortgagor of taxes upon the mortgage. The Constitution of 1879 provides that the mortgage, for the purpose of taxation, shall be treated as an interest in the property. The value of the mortgaged property, less the amount of the mortgage, is assessed to the owner of the property, and the amount of the mortgage is assessed to the holder of the mortgage. The repeal of the provisions making void a contract by the mortgagor to pay the taxes will put California in the same class with Massachusetts and Connecticut, where, in effect, a single tax is levied upon the mortgage and the mortgage interest, and the parties to the mortgage may contract freely as to which shall pay it.

A constitutional amendment in Louisiana to exempt mortgages from taxation, submitted in November, 1906, failed to carry. The proposed amendment was combined with one removing the exemption from taxation on rectories and parsonages, and was defeated by a vote of 3,566 to 24,997. The proposed amendment was as follows:

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"There shall * * * be exempt mortgages, giving loans on real estate, which real estate has already borne its due proportion of taxation, as well as the mortgage notes in the hands of the mortgagee or his or their transferee."

**Water Supply.** New Jersey ('06, p. 736) has provided for the appointment of a special commission to investigate the practicability and probable cost of the acquisition by the State of the title to the potable waters of the State.

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# BOOK REVIEWS

*The Constitutional History of New York, from the Beginning of the Colonial Period to the Year 1905, Showing the Origin, Development, and Judicial Construction of the Constitution.* By CHARLES Z. LINCOLN. (Rochester, N. Y.: Lawyers' Coöperative Publishing Company. 5 vols. 1906.)

Constitutional law, as a distinct subject of American jurisprudence, has frequently been treated by some of our greatest law writers. The basis of such treatises has usually consisted of the Federal Constitution and its effect upon governmental powers and public and private rights. The Federal Constitution has been often treated historically. The conditions which gave rise to its several provisions have been exhaustively described. The personnel of the bodies which constructed it has been considered and the effect of its provisions has been carefully observed. This has resulted in an extensive bibliography of the constitutional history and development of the United States.

State constitutions have seldom been treated historically and even less frequently have they been made the subject of special treatment from a legal standpoint. There can be no doubt of the value of a carefully prepared constitutional history of a great State like New York. As stated by Mr. Lincoln in his preface, "the constitution of a free people represents in outline the beliefs, the sentiments, the enthusiasms, and the policies which the people themselves approve and illustrate in the various relations of daily life."

Under our form of government this sentiment applies especially to the constitution of a State. Such a constitution more directly affects the interests of the people than does the Federal Constitution. The State constitution gives life to institutions directly affecting the welfare of the individual, and produces results within the personal appreciation of every citizen. It follows, necessarily, that the historical treatment of the various provisions of a State constitution involves a consideration of all the events which have contributed to the

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growth and development of the State and its institutions. When we think of this, it will not surprise us that Mr. Lincoln, in writing *The Constitutional History of New York*, was required to extend his work through five volumes.

The value of a work like this depends upon its accuracy and the care used by the author in handling the immense amount of material which must be consulted. A large portion of the material consists of records of conventions, legislatures and commissions, nearly all of which have been printed, and which are for the most part readily accessible. But this mass of material must be examined with discrimination and intelligent judgment, so as to bring into prominence only the influential facts. To accomplish the desired result requires patient industry, judicial intelligence and governmental experience.

Mr. Lincoln's extensive work will itself indicate the success which he has attained in meeting these requirements. The various sources of information could not have been approached without extensive labor, and the material obtained could not have been judicially handled had the author not been fitted by experience to take up the subject. Mr. Lincoln was a member of the constitutional convention of 1894, which resulted in a complete revision of the constitution of the State. He occupied an important position in this convention, and its records bear testimony to the fact that he contributed largely to the important results of that body. His work in that assembly brought him to the attention of Governor Morton, and he was by him appointed chairman of the statutory revision commission and thus became the legal adviser of the governor. He remained in this position through the administrations of Governors Morton, Black and Roosevelt. As legal adviser to the governor, he was required constantly to consider constitutional questions presented to the governor in the form of legislative bills and otherwise. This extended experience in constitutional study peculiarly fitted Mr. Lincoln to write such a work as this.

The plan of the work seems to be suited to the subject. As suggested by the author in the preface, the question might arise as to whether the history should be treated topically, developing each subject independently from the beginning, or whether a chronological order should be observed, including a separate consideration of each constitutional period. On the whole, it seems that he acted wisely in taking up each constitution separately in the order of its adoption.

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This involves a consideration of the same subject in various parts of the work, and it might be said that convenience of reference would be promoted by treating each subject by itself. But the difficulty seems to have been surmounted by a carefully prepared index which unites the several discussions of the same subject.

In the first volume of the work, the constitutions are inserted in the form in which they were adopted. At the end of the sections, cross references are inserted to the same or similar sections of the other constitutions. The author then considers historically each of the constitutions.

The value and importance of this work, may be shown by a reference to a few of the subjects which are discussed. Immediately prior to the convention of 1846, disturbances had arisen in certain parts of the State, owing to difficulties existing between the proprietors of manorial grants and their tenants. The question between such proprietors and their tenants was whether the leasehold tenures should be perpetuated or the rents commuted upon fair and reasonable terms and fee simple titles given upon the payment of such a sum of money as would, if invested at a stipulated rate, produce an amount equal to the rents to be charged. The tenants, in attempting to compel a compliance with their demands, frequently resorted to force and banded themselves in resistance to the law and its officers. Such a condition naturally led to a discussion in the convention of the means by which the difficulties could be disposed of. One result of this discussion was the including in the constitution of a provision prohibiting leases of agricultural lands for terms of more than twelve years. Mr. Lincoln relates the historical facts pertaining to this land controversy, shows the development of the manorial system, and discusses the provision of the constitution relating to agricultural leases.

State aid was frequently rendered to private business enterprises during the early years of the State. This aid most frequently took the form of a loan of State credit to such enterprises as railroads and canals, engaged in internal improvement. The idea seems to have prevailed that the public benefits from the construction and maintenance of railroads was sufficient to justify an appropriation of State money or a loan of State credit to persons and corporations who were willing to undertake the building of such roads. Mr. Lincoln, in his consideration of the provision contained in the third constitution of 1846 relating to this subject, details at considerable length instances

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of the rendering of such aid. And, again, in considering the result of the work of the constitutional commission of 1872, he discusses the causes which led to the adoption of the stringent constitutional prohibition against the loaning or giving of credit or money "in aid of any association, corporation, or private undertaking." It is evident that corruption must have entered into legislative grants of State aid, creating a public sentiment opposed thereto, resulting in its final elimination. The growth and the result of this sentiment are carefully shown by Mr. Lincoln in the parts of his work referred to.

The subject of prisons and prison management, including prison labor, is treated in an interesting manner. In the article on State officers, in the chapter on the convention of 1846, a brief sketch of the creation and development of the office of State prison inspector is given. This system of prison management was unsatisfactory, and the office was subsequently abolished as a result of the amendment proposed by the constitutional commission of 1872. This amendment provided for the appointment of a superintendent of State prisons, which office is continued under the present constitution. The subject of prison management was considered fully in the convention of 1867, and a similar provision was reported by that convention, but the constitution prepared by that convention was not adopted. (Vol. 2, pp. 138–140; 374–378; 532–534.)

The subject of prison labor is discussed at length in chapter twelve of the work. (Vol. 3, pp. 246–297.)

Mr. Lincoln here treats historically of the method of administering our criminal law, and shows the development of our present prison system. He deals especially with the employment of convicts and shows the development of the system as it existed prior to the adoption of the provision of the constitution of 1894, which prohibited the contracting of the labor of prisoners. While this provision restricted the sale of the products of convict labor in the open market, and thus prevented competition with outside industries, it further authorized the legislature to provide that convicts may work for, and that the products of their labor may be disposed of to, the State and the political divisions thereof. It was thus not intended that the prisoners in penal institutions should remain idle, but that the products of their labor should only be utilized by the State and its political subdivisions, thus enabling some compensation to be made by the prisoners for the expense of their maintenance while in confinement.

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The subject of the qualification of voters and the conduct of elections so far as it pertains to constitutional restrictions and regulations is treated historically in an exhaustive manner. (Vol. 2, pp. 294–317.) The discussions in the convention of 1867 are referred to and the results stated. This question was further considered by the constitutional commission of 1872, and the recommendation made by that commission was subsequently adopted. The length of residence required to qualify an elector as prescribed in the amendment proposed, was substantially the same as the provision recommended by the convention of 1894, except that a prescribed residence in a town or ward was omitted by the commission, and the election district was made the unit of local residence. (Vol. 2, pp. 477–481.)

As stated by Mr. Lincoln, the constitutional convention of 1894 had little occasion to give the subject of suffrage extended consideration, although he points out the fact that the convention did discuss at considerable length the question of extending the right of elective franchise to women, and also of the restriction of such franchise to those having a prescribed educational qualification. (Vol. 3, pp. 74–80.)

The constitution of 1894 provides that boards of election officers shall be bi-partisan; that is, one-half shall belong to the political party which at the last preceding gubernatorial election cast the greatest number of votes for governor in the State, and one-half to the party which at such election cast the next greatest number of votes. In his treatment of this subject Mr. Lincoln has called attention to the provisions of previous statutes relating to the appointment or election of election boards. (Vol. 3, pp. 114–131.)

The subject of legislative organization, including the number and distribution of members of both branches of the legislature, occupies a considerable portion of volume three of the work. (Vol. 3, pp. 134–230.) This subject was deemed the most important before the convention of 1894, and it must, in fact, occupy a leading position in any constitutional discussion. Mr. Lincoln, in his treatment of the subject, has considered historically the apportionment of the members of each branch of the legislature during the colonial period, and under each of the constitutions. In his consideration of the apportionment of 1894, he has given especial attention to the several plans proposed, and shown why the plan adopted best conformed to just representation in the legislature. Mr. Lincoln was himself a member of the committee on legislative organization in the convention of 1894, and must speak with full knowledge on this question.

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The subject of gambling and pool selling was prominent in the discussions of the constitutional convention of 1894. The constitution of 1821 contained a prohibition against lotteries. Prior to this time, lotteries for the purpose of raising funds for various public purposes were authorized by numerous statutes. Mr. Lincoln, in his brief historical sketch of the development of lotteries, gives a number of instances where public lotteries were authorized by legislative enactment. (Vol. 3, pp. 33–38.)

Mr. Lincoln calls attention to the interesting fact that when the convention of 1821 began its work, a public lottery system was thoroughly intrenched as a part of our social and financial policy. The governor was authorized, under the statute, to appoint and remove managers of public lotteries, and in the comptroller's office the system was recognized as a practical method of raising revenue. The evils of the system had become apparent when the convention of 1821 was called, and the constitution proposed by that convention contained a provision absolutely prohibiting the sale of lottery tickets. The subsequent constitutional conventions did not take up this subject, but in the convention of 1894 it was proposed to insert a provision prohibiting pool selling, book making, and every other kind of gambling. The discussion in that convention is considered by Mr. Lincoln and the causes which led to the adoption of the proposal stated. (Vol. 3, pp. 44–52.)

The constitution of 1894 contains an express provision to the effect that appointments and promotions in the civil service "shall be made according to merit and fitness, to be ascertained, so far as practicable, by examination, which, so far as practicable, shall be competitive." This seems to be the only constitutional provision requiring appointments in the civil service to be made according to merit and fitness. The principle of basing appointments and promotions of subordinate officers upon fitness and efficiency had, prior to that time, been embodied in legislative enactments. The position which this subject has occupied in our statute law is well described by Mr. Lincoln. (Vol. 3, pp. 313–335.)

The several topics above referred to are illustrative of many others which have been similarly treated in this work. The references made will sufficiently indicate the comprehensive character of the historical treatment of the several constitutional provisions.

A student of constitutional law must frequently be called upon to

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ascertain the causes which led to the adoption of constitutional provisions. A clear statement of facts showing the development of the popular sentiment which unmistakably resulted in a constitutional declaration must materially aid the student and the lawyer in arriving at a correct interpretation of the meaning of such a declaration. It cannot be doubted that the work which Mr. Lincoln has performed in collating and treating these facts will be of great use in this respect.

A review of this work would not be complete without calling especial attention to the fourth volume which contains the constitution of 1894, including the amendments of 1899, 1901 and 1905, with annotations containing extracts from the opinions of judges relating to the several constitutional provisions. The historical importance of the written opinions of judges pertaining to the interpretation of such provisions cannot be overestimated. As stated by Mr. Lincoln in his preface to this volume, "a history of the constitution would be incomplete without some note of these decisions. On great constitutional questions, the judges usually bestow special and elaborate attention upon the inception and evolution of the particular constitutional provision under consideration, and, in many instances, decisions might be cited in which the judges have, not only made history by sustaining or rejecting statutes which have affected great public interests; but, by the construction given to the constitution, have pointed out the proper course to be pursued by the various departments of the government, and have prescribed the extent and limitations of the rights of citizens as members of the State."

In connection with the several sections of the constitution Mr. Lincoln has also included other historical facts. He states that he has done this in accordance with the plan adopted by him of placing the historical notes where they will best elucidate the subject. It is possible that this method will not appeal to a casual reader. It would occur to a person unfamiliar with the plan of the work that the historical consideration of the subject was completed in the first three volumes, where each constitution was taken up chronologically and presumably completed, once for all. It is presumed, however, that the student and the lawyer using this work will find it sufficiently valuable as an aid, to justify acquiring familiarity with the author's method of treatment.

On the whole, it must be said, Mr. Lincoln's labors have been successful. He has substantially contributed to the written history

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of a great State. He has made easily available information which otherwise would have been difficult to obtain. The searcher for knowledge pertaining to the fundamental law of the several States will, after consulting the result of his labors, readily acknowledge the debt due to him. FRANK B. GILBERT.

*English Local Government from the Revolution to the Municipal Corporations Act: The Parish and the County.* By SIDNEY and BEATRICE WEBB. (New York and London: Longmans, Green and Company. 1906. Pp. xxv, 664.)

A little more than three years ago (September, 1903) when Mr. and Mrs. Sidney Webb published their monograph on the *History of Liquor Licensing in England*, there was the interesting and welcome announcement in the preface that it was only a chapter from a much larger work on English local government on which they had already been engaged for four years. This section from the larger work was published in advance in 1903 because at that time a licensing bill was before Parliament; and it was felt that a better comprehension of the history and working of the licensing system might be of service in the controversy which had arisen over the revolutionary proposals of the Balfour government. The monograph of 1903 was then, and has since been, of much service; and moreover the announcement of the larger work contained in the preface awakened pleasant anticipations among students of English history—expectations which, judging from the present volumes, are to be most abundantly realized, both in the magnitude of the new work, and in the plan and style in which it is being carried out.

Not since Merewether and Stephens published in 1835, their treatise on the boroughs and municipal corporations of the United Kingdom has the history of local government in England been attempted by English writers on a scale at all commensurate with the commanding importance of the subject. It is remarkable that during the long period which has intervened between the publication of the *History of the Boroughs and Municipal Corporations*, and the issue of the first volume of Mr. and Mrs. Webb's *magnum opus*, no really comprehensive treatment of local government in England should have been attempted by English writers; and that in this period the field should have been left almost exclusively to the German scholars, Gneist and

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Redlich. It is remarkable because between the time when Merewether and Stephens wrote, and the publication of what may be described as Mr. and Mrs. Webb's preliminary volume in 1903, English local government, and to some extent the English system of Parliamentary representation, have been remodeled. A new face has been put on most English political institutions during these sixty years (1835–1903); and their organization has undergone the most sweeping changes. When Merewether and Stephens were collecting the material for their work the then newly-reformed House of Commons was busy overhauling the poor law system, which had previously had little care from Parliament since the passing of the first poor law in the reign of Queen Elizabeth. In 1835, when Merewether and Stephens were seeing their two volumes through the press, Parliament was putting an end to the old charters of the municipal corporations; remodeling their constitutions, giving these long discredited and popularly distrusted institutions a new start, endowing them with new powers, bringing them into closer touch with the central government, reëstablishing a supervision from State departments in London which had almost completely lapsed between the Restoration and the first reform act, and, moreover, it was at this time setting up a municipal system which was to be characterized by some measure of uniformity.

The era of constitutional reform had lasted for three exceptionally full years when Merewether and Stephens published their history of the old municipalities. Then came a pause—a pause which is adequately explained by Mr. and Mrs. Webb. County government in 1835 was as much in need of reform as municipal government. The magisterial benches and the powers which the nominated magistrates in quarter sessions exercised in county government were as much assailed by the radicals in the reign of George IV., as the nomination boroughs in the old system of Parliamentary representation; as the poor law system or the corrupt and generally self-perpetuating municipal corporations in the towns and cities. But between 1830 and 1835 all that Parliament did in regard to county government was to relieve the magistrates of some of their powers, and in particular to set up an appeal from petty sessions to quarter sessions in licensing cases, and to sever the former close connection of the magistrates with the poor law.

After 1835 there came a halt in the work of constitutional reform

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and the much assailed system of county government through nominated magistrates in quarter sessions survived until 1888. In the meantime Parliamentary representation was again reformed in 1867; and once more in 1884–85. This last reform swept away most of the small Parliamentary boroughs which had survived the reforms of 1832 and 1867—not that they were not rotten boroughs like those which did disappear in 1832, but that these boroughs, or rather the territorial families which controlled them, had influential friends in the governments of 1832 and 1867. In 1884–85, when these survivals of the reforms of 1832 and 1867 finally succumbed to the popular demand for a more equitable distribution of the representation, and for an electorate which should be less corrupt even than that which existed between 1832 and 1884, the Parliamentary franchise was extended to all male householders; and for the old system of county government by the magistrates these reforms of 1884 and 1885 were what the reform act of 1832 was for the old and corrupt municipal corporations which for two or three centuries had been so closely and sordidly interwoven in the old system of Parliamentary representation.

The ancient municipal corporations of necessity went down with the reform of the representative system in 1832. For generations they had existed not primarily for municipal service but as props of the old Parliamentary representation, and when they no longer afforded this service their usefulness had come to an end, and the remodeling of these municipal corporations was a reform which could not be postponed. It is not conceivable that they could long have survived the act of 1832; and after the Parliamentary franchise had been extended in 1884, and made uniform in rural and urban England, it was inconceivable that either the old system of county government, devoid altogether of any resemblance to the representative principle as it is now understood, or that church vestry rule in the rural parishes could long survive. The Parliamentary franchise had at last, after centuries of warping, been put back on the democratic basis on which it originated in the days of Edward I., and it was inevitable that parish and county government should be placed on a similar basis.

County government was so reformed in 1888. It was reformed by the first unionist government (1886-92)—a tory government which was greatly influenced by the liberal-unionists who, as yet, had not identified themselves with the political fortunes of the administration, and who moreover had not abandoned their liberalism,

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as they did after 1896. The same government in 1889 pushed forward in the path of constitutional reform by their dependence on the liberal-unionists—created a county council for London, or rather for that vast aggregation of municipal areas which lies outside the old city of London. In 1894 a liberal government, strongly democratic in make-up and character; reformed parish government, in provincial England; and in 1900 vestry rule in the great populous extra-mural areas of the metropolis, still in some measure under the ægis of the established church—a rule which had been partially reformed in 1818 and 1830—was remodeled; and there were created for London twenty-eight separate municipalities, governed as the municipalities of Provincial England had been since the municipal corporations act of 1835. With the exception of the sweeping changes made by the educations acts of 1902 and 1903, this measure of 1900 for London is the last of the great reforms in English local government. In this field there remains now practically nothing to reform; for as was remarked at the outset, local government in England, in all its phases, has been completely remodeled between 1832 and 1900.

It is with these institutions, which are now of the past, the latest survivor of which disappeared as recently as 1900, that Mr. and Mrs. Webb are concerned, and of which they are to treat in the five or six volumes to be devoted to this obviously needed work. The work is obviously needed; for, except for histories of the poor law and of the police, and except for Merewether and Stephens' history of the boroughs, which in view of the new material which has become accessible since 1835, and the newer methods of handling historical data, is now necessarily much out of date, there is no comprehensive or adequate history of English local government by an English writer.

Although Mr. and Mrs. Webb's work is on such a magnificent scale, it is to cover not more than a century and a half. They begin with 1689; and they do not propose to travel further than 1835—the year when the municipal corporations were reformed. Even with the assistance of their numerous trained colleagues in the work—an assistance that is most generously avowed—it would have been almost a physical impossibility for Mr. and Mrs. Webb to have pushed their investigations back to the earliest times. Their working lives might have been wholly devoted to research had they made the attempt, and in that case these exceptionally valuable volumes might not have got into print. They have been content to take the revolution of

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1689 as their starting point; and the starting point has been admirably chosen. Before the revolution county and municipal government was subject to some supervision from the Star Chamber, from the privy council, and from the judges of the high court. After the revolution this supervision from the central government was practically at an end; and there was no resumption of it—certainly no continuous or systematic supervision—until after 1834, when the local government board and the home office again took up some such supervision as had been exercised from London until as late as the Restoration. For a century and a half it may colloquially be said that the municipal corporations, the magistrates in quarter sessions, and the vestries concerned with parochial administration went their own gait, with no interference from State departments; with the government showing little or no concern in their proceedings; or in the improvement of their organization and with Parliament little disposed to interference, except when some patent break-down in municipal rule called for the creation of new statutory local governing authorities, supplementary to the old municipal corporations; or when the magistrates concerned with county government, who were always strongly represented in the House of Commons, asked for new or special powers.

First for the parish, and next for the county, Mr. and Mrs. Webb describe the organizations of their government as they stood at the revolution, and trace the changes which each underwent between 1689 and 1835. They show how these local governing bodies were constituted. As regards the vestries they make clear their connection with the established church; their part in the assessment and collection of taxes; and they bring out with much vividness the different types of vestry—the vestries which were open to all ratepayers, and democratic in their organization and methods; and the vestries which were close, and in which there were oligarchies—in some cases bosses as well—not so avaricious or corrupt as the oligarchies in the old municipal corporations, but self-perpetuating and sometimes as little amenable to local public opinion. As regards both parish and county, Mr. and Mrs. Webb bring into view the class of men who interested themselves in local government; the increasing volume of work which was thrown upon them in those parishes and counties which, by reason of manufacturing development or the growth of London, became great centers of population; and they also trace for the counties the incoming of a local civil service.

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In working out the changes in the counties, Mr. and Mrs. Webb are perhaps most informing, certainly most interesting, when they are describing how the magistracy became exclusively of the landed classes; how the county benches came under the domination of tories and men who were of the established church; and how in the last half of the eighteenth century the county benches drew to themselves practically all legislative authority, and to a large extent became assemblies whose word was law. Where the parish vestries and the rule of the magistrates failed, and to what causes failure was due, is traced with much fullness; as are also the reasons for the unpopularity of the magistrates as governors of the counties. All this, and much more that is equally interesting and equally informing because so much of it is in print for the first time, is supported by a wealth of authorities and illustrations, given in the copious footnotes, which testify to the patient and enlightened research in county and parish records hitherto uninvestigated, and in contemporary literature which has long ago passed into oblivion.

A really serviceable index was to be expected in a work by Mr. and Mrs. Webb. They more than fulfill this expectation. They make a new departure in indexing, and one which has much to commend it; for the index, which extends to fifty-five pages, is divided into (1) subjects; (2) authors and other persons; and (3) places. All the vast material which has gone into the volume which is divided into two books, of seven and six chapters, respectively—is splendidly marshaled; and an index such as has been described makes almost every statement in the book easily available for reference.

EDWARD PORRITT.

*Reconstruction in South Carolina, 1865-1877.* By JOHN S. REYNOLDS. (Columbia, S. C.: The State Company. 1906. Pp. 522.)

Several volumes have already appeared dealing with that most interesting period of historical investigation, the reconstruction era, and to this list Mr. Reynolds has added another in his book on South Carolina. It takes up the story with the capture of the Confederate governor, Magrath, in 1865, and closes with the installation o. the democratic administration in 1877. The chronological narrative form is used almost exclusively throughout the volume, with one interruption for the Ku-Klux trouble. The last four chapters are

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devoted to the campaign of 1876, the dual government, the story of the frauds, and reviews and reflections. The story of the different administrations is about the same, each succeeding one becoming more steeped in shame, except the last. There is the story of the nominating conventions, the election, the governor's message, the organization and proceedings of the legislature, corruption, bribery and fraud, with occasional race troubles and military interference to relieve the monotony.

This period of history is a sickening one at best. The overthrow by Congress of the governments instituted under the presidential plan and the substitution therefor of governments based on the new electorate was only the beginning of disaster. In joint assembly the first legislature in South Carolina contained eighty-eight colored and sixty-seven white members, of whom twenty were democrats. The educational qualifications of the colored legislators and officers probably were below those of the county school commissioners at Columbia. The extent of their learning may be gathered from the following extract from an official letter:

"The follerring name person are Rickermended to the Boarde.... Having Given fool sates fact Shon in the tow Last years."

None of the governors were above reproach; most of them were notorious. All used the negro militia and the whole machinery of the State government, including public funds, to carry the elections. That the negro militia, in many cases aggressively offensive, was the cause of nearly all the race troubles is clearly brought out by the author. A republican judge sent by a republican governor to investigate the troubles in one place declared that he found the worst government ever imposed upon Anglo-Saxons since the Danes invaded England (p. 303).

It is no wonder, then, that the Ku-Klux arose. After devoting a few pages to the so-called Ku-Klux raids, the author attempts to show that President Grant's proclamation of martial law in nine counties was based upon wholly insufficient grounds. No one was ever brought to trial for a military murder committed by the soldiers while making their arrests. The juries were packed and the witnesses for the defense were intimidated. So flimsy was the evidence on which five hundred citizens were arrested that few of them were ever brought to trial.

The story of "high finance" throughout the carpet-bag régime is one of continuous peculation and plunder. After Louisiana, South Carolina was one of the worst sufferers. In the legislature, "sup-

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plies" became a very elastic term, including such articles as the finest brands of liquors, cigars, groceries, toilet articles, furniture, clothing, dry goods, jewelry, etc., all paid for out of the public funds at extortionate prices and appropriated by the solons to their own private use. The State debt was increased $14,000,000 in six years with nothing to show for it. Some of the bonds were so fraudulent that they were repudiated even by the crapet-bag legislature. At one time the credit of the State had sunk so low that her bonds were hawked about at fifteen cents on the dollar.

The bare recital of such facts may seem to the uninitiated like the use of intemperate language. For one old enough to have witnessed, if he did not actually take part in, the affairs of which he writes, Mr. Reynolds has succeeded to a remarkable degree in repressing all personal or partisan animus. Apparently he has given us a plain, unvarnished tale, and he has performed the service so well that the reviewer wishes he could pass it by without any unfavorable criticism, but the work might have been improved in several respects. That the author has gone to the sources there can be no doubt, but he has not used them very judiciously. So many documents are quoted in full or at length; the result is a sort of compromise between a documentary and a narrative history. With all these quotations, however, there is not a single footnote reference from cover to cover, and only in the case of a few well-known documents is their location indicated in the body of the text. A complete roster of all the conventions, political and constitutional, and of every legislature, the circuit judges and other officials certainly is out of place in any except a documentary history. The "notable legislation" of each session is enumerated but the reader unacquainted with conditions in the State is left to guess, or gather from the book at large, whether it was good or bad. Documents also are quoted without criticism, for example, the protest of the conservatives to the Senate of the United States against the constitution of 1868 (p. 95), and more particularly the reply of the radicals to the petition of the taxpayers (p. 253). In this case the author correctly says that a just opinion of its truthfulness may be formed from the history of the previous administrations and from the fact that fourteen out of the twenty-four appointed to draw up the reply were guilty of bribery. There is a needless repetition of documents practically the same (pp. 163, 165). Local government and the public schools do not receive adequate treatment, and very little light is thrown on economic and social conditions.

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Governor Chamberlain is generally regarded as one of the best of the carpet-bag governors, but Mr. Reynolds reveals him in a very unfavorable light. While not so bad as his predecessor, Mr. Reynolds endeavors to show that he was not above corruption and that he worked for coëducation of the races. While the author appears to have made out a good case, one still feels the lack of penetrating criticism, that the case for the defense has not been fairly stated when no direct reference whatever has been made to Governor Chamberlain's book. The campaign of 1876, by which Governor Chamberlain was ousted, is described well, but the story of the election frauds is yet to be written.

DAVID Y. THOMAS.

*Constitutional Law of England.* By EDWARD WAVELL RIDGES, (London: Stevens and Sons; and Boston: Little, Brown and Company. 1905. Pp. xxxii, 459.)

It should be stated at the outset that this excellent treatise belongs to the domain of law rather than to that of political science. A glance at the table of contents will impress the reader with the comprehensive scope of the work. Although the book contains less than four hundred pages of text the following topics are discussed: The Sources of English Constitutional Law; The Character of English Constitutional Law; The Meeting and Termination of Parliament; The House of Commons; The House of Lords; Public, Private, and Money Bills; The Public Revenue; The Crown, The Privy and Cabinet Councils, The Members of the Executive; The Judiciary; Changes under the Judicature Acts, 1873–1902; The Church; The Navy; The Army; The United Kingdom, the Channel Islands and the Isle of Man; The Colonies; The Indian Empire; Protectorates and Miscellaneous Possessions.

The book as a whole is the product of careful scholarship and prodigious labor but the disadvantages resulting from the attempt to compress so much into a single volume of moderate size are evident on almost every page. The excessive condensation has reduced the book to a series of juiceless summaries which in many instances are about as interesting as a table of logarithms. Procedure on impeachment is dismissed in eight lines (pp. 192–193), and the government of a British possession is reduced to two or three lines of text (pp. 390-

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391). The result is many half-truths and general statements which require modification. The discussion of the veto power of the President of the United States is so incomplete as to leave a false impression, and the statement that the Constitution of the United States "came into force on June 21, 1788," needs modification. Again, one might infer (p. 76) that the Irish peers now number one hundred, while as a matter of fact, their number is much less. It is also stated (p. 169) that "the Secretary for Ireland is now always a member of the Cabinet." It is true that he has been a member during the last few years but Gerald Balfour held the office in 1900, and George Wyndham as late as 1902, without seats in the Cabinet.

While in many instances the discussion is so brief as to be inadequate, in some others the reader is swamped in a mass of minute details which might well be relegated to the footnotes or omitted altogether. The details of the enlistment of a soldier (p. 296), the intricacies of local government (p. 324), the legal liabilities of certain officers under given conditions, and the maze of "writs," "processes," "remedies," "appeals," "jurisdictions," "procedures," "entries," etc., are not particularly luminous.

In his eagerness to economize space the author has given in many instances the theory of the English law rather than the theory and the practice together. For example, it is stated (pp. 55–56) that Parliament is dissolved "by an exercise of the Crown's prerogative" and that "the constitutional moment for the exercise of this prerogative arrives when the sovereign has reason to suppose that the Parliament, and thus in effect the party which possesses a majority in the House of Commons, no longer enjoys the confidence of the electorate." Again it is stated (p. 75) that "the Crown has the exclusive privilege of creating peers, and can create as many as it pleases." It is also stated (p. 85) that the Crown has the right to "dismiss the Ministry and appoint a new one." In theory, of course these statements are correct but the practice is quite different. The discussions of Anson and Todd, which combine the theoretical and practical prerogatives of the Crown, are far more satisfactory. Probably the weakest part of the book is that which deals with the American government. The discussion of the characteristics of English constitutional law is a comparative one, but in dealing with the American Constitution the author is clearly treading upon unfamiliar ground. He has studied the Constitution, but in several instances has missed its obvious intent.

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He states (p. 16) that judgment in cases of impeachment entails "loss of office and disqualification from holding further office under the Government"—which is not always true. This is simply the maximum penalty. In the case of Judge Pickering the defendant was found guilty and removed from office but was not disqualified "from holding further office under the Government." Again, it would seem from the account (p. 17) that the President is empowered to convene Congress in all cases, whereas he does so, not regularly, but on "extraordinary occasions." Mr. Ridges, in common with many others, finds difficulty with the dual meaning of the term "States," and refers to the members of the Cabinet as "State Ministers." He also states (p. 17) that there are *seven* members in the President's Cabinet. He has apparently followed the first edition of Bryce's *American Commonwealth* which was published eighteen years ago. Again, it is scarcely correct to say that the powers of the State legislatures are "undefined" (p. 14), since they are defined to a considerable extent by the State constitutions. It is also evident that Mr. Ridges has no conception of the development of our civil service laws during the last twenty years (see pp. 18 and 154). He also states that the House of Representatives elects the President "in case of an equality" of votes. He has apparently not considered the change made in the Electoral College by the passage of the Twelfth Amendment. The most startling statement, however, is that the President is "empowered to fill up vacancies in the Senate as they occur" (p. 17). It is also surprising to read (p. 15): "The ratification [of the Constitution] by the last of the States, thirty-seven in number, who now compose the Union, was that of Rhode Island in 1790." Sebastian Cabot, not John, is given the credit for the voyage of 1497.

In spite of these imperfections, however, none of which is vital, the book is a valuable contribution to the literature of constitutional law. The statement of the historical background of British institutions is generally good; the classification of the colonies and the discussion of colonial government are very satisfactory, while the treatment of Imperial Federation is of interest in the light of the recent agitation headed by Mr. Joseph Chamberlain. The book also contains much information in regard to recent constitutional development not to be found in any other single work. It should be said also that the author has gone to the sources, for the most part, for his informa-

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tion, yet the reader is somewhat surprised to see Hume's *History of England* quoted as an authority for statements of fact (p. 91).

Typographical errors are rather too numerous, even for a first edition. Reference is made (p. 232) to the *Courts of Pied Pondre* and to the *Contume de Normandie* (p. 340). The Act of Union with Ireland is dated 1901. Pronouns are frequently unskilfully used and there is some repetition. The substance of p. 106 is repeated, verbatim in parts, on p. 126.

T. F. MORAN.

*A Treatise on American Citizenship.* By JOHN S. WISE. (Northport, Long Island: Edward Thompson Company. 1906. Pp. 340.)

In his introduction the author says "the subject is not only one concerning which the legal profession should have a convenient text-book, but is an indispensable part of the education of every man who makes pretension to a fair education and knowledge of the history of his country. * * * The whole object of the author has been attained if he has succeeded in putting the origin, nature and obligation of the citizen in form sufficiently attractive to enlist a more widespread understanding among educated Americans of their rights and obligations as American citizens. The present ignorance of our people and the confusion in their apprehension of the subject would be something incredible in older countries."

The aim of the author has been, for most part, attained. The book is well arranged, well indexed, and is so written that the non-professional reader will be able to get through it with far less weariness of the flesh than he would experience in the perusal of most law books. It does not attempt any exhaustive discussion. It essays merely to unfold in logical and readable form the settled law governing the rights, privileges, and immunities of citizens of the United States and of the several States. There is little occasion to question the accuracy of the author's statement of most of the legal principles he lays down. Naturally, there are some clerical or typographical errors. Such as, for example, the statement on p. 163 that the "opinion of Chief Justice Taney in the *habeas corpus* case of Milligan is one of the finest pieces of judicial eloquence in American jurisprudence." The footnote gives the reference "1866, 4 Wall. 2." The case of *ex parte*

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Milligan was a *habeas corpus* case and it was decided by the Supreme Court of the United States at the December term in the year 1866, but the opinion in that case was delivered by Mr. Justice David Davis and not by Chief Justice Taney, who, at the time it was handed down, had been more than two years in his grave. The case meant by the author was unquestionably *ex parte* Merryman reported in Taney 246 and in 17 Federal Cases, 144. Chief Justice Taney's opinion delivered in the case of John Merryman of Hayfields, who in 1861 made application for a writ of *habeas corpus* in order to secure his discharge from military arrest, deserves the encomium which Mr. Wise passes upon it.

There are a few inaccurate or insufficient statements. Thus on p. 195 it is said "the Fourteenth Amendment is broader in language than the Thirteenth, yet no broader than the Thirteenth in conferring any power upon the Federal Government to legislate upon its own initiative." The fact, of course, is that the Thirteenth Amendment relates to but one subject and the Fourteenth to many subjects. Yet, for the most part, the Fourteenth Amendment is directed to the sole end of protecting the citizens of the United States against unjust action upon the part of the States as such, and the power of Congress to enforce the Amendment is, consequently, limited to preventing or punishing such action on the part of any State, or of those who act for the State. The Thirteenth Amendment prohibits the existence of slavery or involuntary servitude anywhere within the United States, and Congress has the constitutional right to punish anyone who anywhere within the United States holds another in slavery or involuntary servitude.[1] This important distinction between the Thirteenth Amendment on the one hand and the Fourteenth and Fifteenth on the other, is not in this portion of his book, alluded to by the author. On p. 205 it is stated that it is impossible to reconcile the decision in *ex parte* Virginia, 100 U. S., 339, with the case of Virginia *vs.* Rives, 100 U. S., 313. There seems to be no such difficulty. In Virginia *vs.* Rives it is expressly declared that a State may exert her authority through different agencies and the prohibitions of the Fourteenth Amendment extend to her action denying equal protection of the laws whether it be action by one of these agencies or the other. Congress, by virtue of the fifth section of the Fourteenth Amendment, may enforce the prohibitions whenever they are disregarded by either the legislative, the executive, or the judicial department of the

[1] Clyatt *vs.* U. S. 197 U. S., 207.

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State. The mode of enforcement is left to its discretion, but the Fourteenth Amendment is broader than section 641 of the Revised Statutes, as the latter does not apply to all cases in which the equal protection of the laws may be denied to a defendant. Section 641 of the Revised Statutes is the section which provides for removal from the State to Federal courts of any civil suit or prosecution commenced in any State court for any cause whatever, against any person who is denied or cannot enforce in the judicial tribunals of the State, where such suit or prosecution is pending, any rights secured him by law providing for the equal civil rights of citizens of the United States. The court, therefore, refused to order the case removed from the State to the Federal court. In *ex parte* Virginia, the court held that the provision of the act of March 1, 1875, imposing punishment on any officer or other person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizen on account of race, color or previous condition of servitude, was a valid exercise of the constitutional power of Congress and that a Virginia judge indicted in the Federal courts for such violation of the statute must stand his trial. On p. 188 and 189, the author discusses the right of the citizen to free speech. He says: "In time of peace under Federal statutes authorizing the deportation of anarchists, persons have from time to time been indicted, arrested, punished or deported for seditious, anarchistic and nihilistic utterances and publications." Reference is made to the case of United States *vs.* Williams, 194 U. S., 279. The author does not say that the Supreme Court distinctly based its decision in that case on the ground that John Turner, the English anarchist whom the immigration authorities were seeking to deport, was *not* a *citizen* but an *alien*; nor does he give any reference to any cases arising under the Federal statutes authorizing the deportation of anarchists in which persons have, from time to time, been indicted and arrested and punished for sedition, anarchistic and nihilistic utterances and publications.

As a rule, however, in his statement of the result of the adjudged cases the author is both clear and correct. It is not so certain that he is always so in his historical illustrations or that his own comments on political questions are always well balanced. In discussing the opposition to the adoption of the Federal Constitution he says, on p. 26, "it was argued by those opposed to the Constitution in the North that it placed the Northern States, especially the small ones, at the mercy

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of the Southern States in the Union. It was this argument, no doubt, that made Rhode Island reluctant to become a member of the Union. On the other hand, the Southern States realized that the population of the North was growing much more rapidly than that of the South. It was argued by those opposed to the Union in the South that such a result was inevitable; that in a short time the slave-holding States would be dominated by the free States of the North and West. * * * It was doubtless by arguments like this that North Carolina was restrained so long from becoming a member of the Union." The proceedings and debates of the North Carolina convention of 1788, are quite fully reported in the fourth volume of Elliott's Debates. The argument which the author thinks controlled the action of that convention in refusing ratification does not appear to have been made in the convention at all. One speaker alone said something which might possibly show that such an idea had crossed his mind. So far from the opposition in North Carolina to the ratification of the Constitution having its root in the zeal of the people for the protection of the slave interests, the fact was that Mr. Iredell, the federalist leader, showed that he felt that in his State there was only one subject in connection with the question of slavery upon which the friends of the Constitution were on the defensive, and that was with reference to the provision of the Constitution which permitted for twenty years the importation of slaves. He evidently assumed, and the speeches in reply to him seem to have justified the assumption, that public opinion in North Carolina was then opposed to the further importation of negroes and would have favored the getting rid of slavery altogether. North Carolina had then, as it has now, few towns of importance. It was a farming community and for the most part a community of small farms. Like all other similar sections of the country it disliked the new Constitution. It feared that the taxes of the new government would be levied in money and the people had no money with which to pay taxes. There was a general belief that the provisions of the Constitution intended to prevent the further issue of paper money would increase the burdens of the debtor class. As compared with North Carolina, Rhode Island was then a commercial State; yet its policy was controlled by the non-commercial classes and the considerations which determined its action were substantially the same as those which led North Carolina to decide the question in the same way. The dominant party in Rhode Island was committed to the cheap money theory.

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On p. 152, speaking with reference to the Supreme Court, Mr. Wise says: "even concerning such of its decisions as have been refuted by the logic of events, the wisdom and justice of its action upon the law and the facts then before it, are now universally admitted, however bitterly they might have been aspersed at the time those decisions were rendered." It seems probable that the author had in mind, among the cases which had given rise to criticism, that of Dred Scott. Opinions still differ as to whether what the court in that case assumed to decide would have been decided rightly had the court been called on to decide it at all. The unwisdom in that case of the court's traveling outside the record to express its opinion upon a question of then current political discussion has, by the lapse of time, become not less but more apparent. On pp. 189 and 190, the author says: "On the other hand, those who in that day (1787) were so ardent for the absolute liberty of the press could not have foreseen the immense increase in public and private printed matter which was to occur, the almost unlimited power for good or evil which the press was to possess, the irreparable nature of the injuries which it is often able to inflict, or the irresponsible hands into which so large a portion of the press of our day was in time to pass." Does the author really believe that the press today is in less responsible hands than it was in 1787? The worst of the yellow journals are pecuniarily able to answer for any conceivable judgment that could be reasonably given against them. Not so much could have been said for most of the editors who libeled the first President of the United States.

It is doubtful whether all of his readers will agree with the statement with which he closes his treatise, that "we sorely need a laboring class not composed of individuals who aspire to higher education, political prominence, social importance, and even the Presidency of the United States." There are other things we need more.

JOHN C. ROSE.

*War Government, Federal and State, in Massachusetts, New York, Pennsylvania and Indiana*, 1861–1865. By WILLIAM B. WEEDEN. (Boston and New York: Houghton, Mifflin and Company. 1906. Pp. xxv, 379.)

Said a leading American journal, shortly after the close of the Civil War: "We all expect sometime to write out our impressions of the

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war." Mr. Weeden is one who has for many years contemplated the rendering of this service. He received encouragement and advice from George Bancroft and Francis Parkman, direction and suggestion from Justin Winsor, and much sympathy from Herbert B. Adams. Yet, in spite of all this, we learn from the opening paragraph of his introductory chapter that he was late in reaching a definite decision to write and publish. At times he was under the impression that enough had been already written; then again, he for a time, sought to persuade students of the newer generation to write upon the perplexing interplay of State and Federal governments during the great struggle. Finally, he was impelled to action by the remark of a "Nestor," whose name is not given: "Ah! those who write about it must have lived it." Realizing that these were already few and were rapidly diminishing in number, Mr. Weeden entered upon his task.

The book is not simply a record of personal experiences and observations, it is better described as a somewhat extended study of the Federal government in coöperation with four leading States for the suppression of the rebellion. The four States are: Massachusetts, New York, Pennsylvania and Indiana. In a sense the States selected are representative of the loyal States in general, yet for various reasons they held special and peculiar relations to the Federal administration. The materials chiefly used are the records in the archives of the four States and the published Official Records of the Rebellion. But in the matter of interpretation and the selection of materials, the author is guided and controlled by individual conviction. The records of history are used to illuminate an experience or to maintain an opinion.

Our author's general point of view is that of an extreme Unionist. He regards the Union as antedating the States, and the States as having no standing except through their relation to the Union. The teaching of Goldwin Smith and Henry Cabot Lodge to the effect that before the Civil War, the Union of 1789 was a mere compact, dissoluble at will, is characterized as a modern heresy, and two sentences are quoted from an argument by D. H. Chamberlain which are declared to kill the vagary, though these sentences simply reiterate our author's own opinion. This mode of reasoning is repeated too often. An *ipse dixit* is accepted as proof or demonstration.

Besides the introduction and the chapter on the Genesis of the Union there are chapters on the Executive Crisis, Administration, State Support, Federal and State Interferences, Party Estrangement,

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The People under Compulsion, Government, and The Union Vindicated and Developed. In these nine chapters, three distinct stages of the war are recognized and discussed from many points of view. First is the period covering the first fourteen months, when the movement for the suppression of the rebellion was chiefly in the hands of the loyal governors. This was a time when a people practically united was seeking to end the war at once by the most ready and available means at hand. Then follows the rise of partisan controversy and division in the loyal ranks, leading to the third and final stage, in which the full force of the nation is levied upon for the defense of the Union.

The author contends that the war ought to have been ended promptly and speedily by the overwhelming forces which the loyal governors were ready to place, armed and equipped, in the hands of the general government. He is severe in his criticism of Mr. Lincoln and the departments at Washington for not availing themselves of this ample and adequate power at their command. This part of the book is in many respects the most satisfactory. Public records are relied upon for support of the views advanced. Extreme Unionist though he is, the writer shows, nevertheless, a full appreciation of the position and power of the States. "What saving of blood and treasure, of agony and endurance in these struggling peoples, both North and South, would have been made if the resources of the Northern States as States could have been a little better applied in the years 1861 and 1862!" (p. 176). He looks upon the governors as "detached but assimilated war ministers," collaborating with the executive of the nation, maintaining, nevertheless, with logical consistency, this belief in the dominance of the one united people. "The tremendous interplay of Federal and State power had precipitated on these heads of States such responsibility as no government had ever witnessed. These men were the direct exponents of the people in the early stages of the rebellion. They put into action and accomplished in fact the popular desire, and registered the popular mandate." (p. 222)

It is true that after Sumter and Bull Run there was a great outpouring of men and treasure on the part of the Northern States; it is also true that this ardor afterwards abated, making it necessary to resort to compulsion in order to fill the depleted armies. Mr. Weeden may not be correct in apportioning the blame for this change to the government at Washington; but there is great gain in having the correspondence between the governors and other public men so thor-

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oughly exploited by one whose words burn with the ardor of conviction.

In criticising the National administration, Mr. Weeden is dealing with men whose end and aim he heartily approves. His strictures are here tempered with mildness and moderation and many of them are supported by evidence. But when he passes to the subject of the rise of party division in the midst of the war, he deals with men whose alleged objects do not command his sympathy. A passage from his preface may serve to suggest our author's method of treating this part of the subject. Rhodes' history is highly commended for its absolute impartiality; then follows: "I differ in construing the facts at some important points, as will appear in the following pages. Very likely the difference is that I could not rise to the heights of his sedate charitableness." Signs of such inability do indeed appear on various pages. Governor Seymour, Mr. Vallandigham and all who opposed the administration are branded as copperheads, and are described with the feeling of one who has indeed lived the history, one who has forgotten nothing and abated nothing throughout all the intervening forty years. The statement is reiterated that the men of the North who arrayed themselves against the policy of the Federal government are to be visited with increasing reprobation as time goes on.

On p. 300 appears a quotation from a letter of General Dix to Governor Seymour, written August 8, 1863, three weeks after the bloody riots in New York city. The object of the letter is to secure the active coöperation of the governor in the execution of the draft. In the course of his argument, General Dix admits a qualified justification of the conduct of the Southerners who resist the government; then he says: "Among us resistance to the law by those who claim and enjoy the protection of the government has no semblance of justification and becomes the blackest of political crimes." I read this sentence, as quoted by Mr. Weeden, supposing that the General had in mind the citizens of New York whose hands were red with riot and murder, but six pages further on I am told that General Dix set forth the *governor's* course as "the blackest of political crimes." I have since read the letter as it appears in the records and I am sure that the governor did not so understand it This is a case where a larger measure of sedate charitableness would have contributed to clearness and correct understanding of the facts.

This part of the book is of especial value from the fact that it fur-

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nishes a key to the interpretation of a large amount of the literature of the Civil War. On p. 58 there is a reference to Lowell's teaching "that the Providence of history holds in the imminent thunderbolt some power to solve social evils which neither prudent citizen nor peaceful moralist can comprehend, much less administer." If this teaches anything it is that above and beyond human reason and human initiative there is a Power which assists men in solving social evils. Yet Mr. Weeden makes the Civil War an instance of the intervention of this Providence which is above reason, and at the same time he glorifies war as "the final reason, the clarifying and purifying master, which rends the shams of politics and amends the faulty ways of decadent civilization."

It is possible to make these words harmonize with the teachings of Lowell by identifying "final reason" with Providence, or the elemental powers of the universe. In that case, when men commit themselves to the arbitrament of war, the ordinary processes of human reason are at an end; passion tends to dominate reason. But there is abundant evidence that Mr. Weeden does not make this distinction. He accounts himself to be exercising conclusive ratiocination and pronouncing final historic judgment while branding Villandigham as a double-dyed traitor, Seymour as the blackest of criminals and Horace Greeley as a fool. The real fault of these men is, as the author abundantly shows, that they continued to reason and argue after the inauguration of a state of war just as they did in time of peace. They ought to have known that after Sumter had fallen the time for debate was past. That they did not perceive this, is their crime, their folly. The case is clearly one for persuasion rather than for vituperation, and a display of excessive passion is itself evidence of the presence of that which is either above or below reason. Extravagant abuse stimulates compassion and develops a disposition to defend the victim. If Mr. Weeden really wishes coming generations to reprobate the Northern reactionaries of the war-time with ever-increasing fervor, he would come much nearer to accomplishing his purpose by casting his utterances in the quiet form of moderate persuasion; yet the entire book is well worth a careful reading, and it is to be hoped that many more of the diminishing number of those who lived the Civil War will attempt to portray its history.

A few minor errors are noted. On p. 220, Wilson of Iowa is mistakenly called "Governor Wilson." On p. 322, the Garrisonian

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abolitionists are credited with believing that the national government had power to free the slaves. It was, in fact, over this issue that the abolitionists divided, the followers of Garrison opposing this interpretation of the Constitution. M. Ostrogorski's name is repeatedly misspelled, and Mr. D. H. Chamberlain appears in the index as D. A. Chamberlain.

JESSE MACY.

*The Legislative History of Naturalization in the United States from the Revolutionary War to* 1861. By FRANK GEORGE FRANKLIN, Ph.D. (Chicago: University of Chicago Press. 1906. Pp. 330.)

As the author states in the preface, the subject of naturalization has assumed a larger importance in the history of the United States than in that of any other nation. It accordingly is not surprising that the subject has engaged the attention of Congress almost continuously, and that the laws on the subject have been modified from time to time to adapt them to the ever-varying conditions arising in a country which, in the course of a century, has developed into a world power. In his *Legislative History of Naturalization*, Professor Franklin reviews in detail, with great accuracy and in a scholarly manner, all actions relative to naturalization taken by Congress down to 1861, whether or not such action resulted in actual legislation; and he also considers the conditions which have influenced such action. To write the book the author has relied only on original sources of information, such as the journals of both houses of Congress, memorials of legislatures, reports of committees and reports of debates. He cites the authority on which he relies for every important statement. The book unquestionably is a valuable contribution to the existing literature on the history of the United States.

The desire to encourage immigration and to extend the rights of citizenship to those who have taken up arms in the defense of the United States, seems chiefly to have influenced the policy of the legislation on the subject. It appears that during the period immediately preceding the Revolutionary War, each colony possessed the power to naturalize foreigners, subject to control by the Crown. One of the grievances against the King of Great Britain referred to in the Declaration of Independence is, that "he has endeavored to prevent

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the population of these States; for that purpose obstructing the laws for the naturalization of foreigners."

Upon the formation of the Confederation, the power to naturalize foreigners devolved upon the States. The Articles of Confederation provided that the free inhabitants of each of these States shall be entitled to all the privileges and immunities of free citizens of the several States. In effect, every State possessed the power to naturalize aliens in every other State. The serious consequences which might have resulted from the exercise of this power, undoubtedly led to the adoption, practically without opposition, of the constitutional provision that Congress shall have power to establish a uniform rule of naturalization. Washington, on January 8, 1790, in his annual message, recommended to Congress that the terms on which foreigners might be admitted to the rights of citizens should be speedily ascertained by a uniform rule of naturalization. Shortly thereafter Congress enacted the first law on the subject. It provided for the naturalization of free white aliens after two years' residence in the United States, upon application to any common law court of record in the State where they had resided for one year, and after satisfying the court of their good character and after taking an oath to support the Constitution of the United States. It also provided that, minor children resident in the United States at the time became citizens, and that children born abroad of citizens were to be regarded as natural born citizens, unless the father had never resided in the United States. Any citizen already proscribed by a State was not to be readmitted to citizenship except by the act of the legislature of the proscribing State. In 1795 a new law was enacted which provided that three years before naturalization a declaration of intention to become a citizen and to renounce all foreign allegiance must be sworn to in a State or Federal court, that at the time of applying for citizenship the alien must declare on oath that he has resided five years in the United States and one year in the State or Territory in which the court admitting the alien is held, that he does renounce all foreign allegiance, and any title or order of nobility he may have, and that he will support the Constitution of the United States. It also provided that the court must be satisfied of such residence, of the good moral character of the applicant during the five years, and that he has been for that time attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same. In

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1798, when the United States was threatened with becoming involved in a European war, Congress passed an act which required the declaration of intention to be made five years before naturalization and required a residence of fourteen years, except from those who were resident in the United States before 1795. Jefferson, in his message at the opening of Congress, December, 1801, recommended a revision of the law on the subject of naturalization. On April 14, 1802, Congress accordingly passed an act which, as the author says, though changed from time to time in minor particulars, remains the law in all of its general features after the lapse of one hundred years. It again reduced to five years the period of residence required for naturalization. It required aliens who arrived after June, 1798, to register their names in the office of a clerk of some Federal or State court and made the certificate of such registration evidence of the time when such aliens arrived. It provided against receiving the mere oath of an alien as proof of the time of his arrival and required him to establish that fact by testimony. It made an exception for the benefit of those resident in the United States before 1795, by entitling them at any future time to become naturalized without any previous declaration of intention.

The author devotes several chapters to the consideration of the unsuccessful attempts made during the period of native Americanism and the Know-nothing period to effect legislation requiring twenty-one years residence of foreigners thereafter naturalized. These efforts were induced by a desire to discourage the immigration of undesirable foreigners and to prevent the corrupt practice of illegally naturalizing aliens during political campaigns for the purpose of affecting the result of elections.

In another chapter the author reviews the many attempts made in Congress to procure legislation on the subject of expatriation. The view that expatriation is an inalienable right and that the denial of the right of expatriation would be inconsistent with the exercise of the power of naturalization of foreigners and that any regulation of the right would in effect circumscribe it, prevailed, and no legislation on the subject was ever effected.

It is to be regretted that the author concludes the history with the year 1861, and, therefore, does not consider the following provisions, subsequently enacted by Congress: the provisions made in the interest of seamen, of aliens honorably discharged from military or naval

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service, of aliens of African nativity or descent; the provisions prohibiting the naturalization of Chinese, anarchists, and persons violating the immigration laws; the provisions prescribing penalties for violations of the law, and finally the provisions enacted at the last session of Congress, requiring persons hereafter to be naturalized to be able to understand and read the English language, and extending the functions of the Immigration Bureau so that it becomes a Bureau of Immigration and Naturalization.

WILLIAM BONDY.

*A History of Modern Liberty.* By JAMES MACKINNON, Ph.D. (London: New York and Bombay: Longmans, Green and Company. 1906. Volumes I and II. Pp. xxii, 398; xi, 490.)

These two volumes represent the beginning of an ambitious undertaking which cannot be adequately criticised in its present incomplete form. The first volume is avowedly introductory, dealing with Origins, The Middle Ages; while the second embraces The Age of the Reformation. Not until the remaining volumes appear can final judgment be given of the character of the work and of the extent to which the professed aim of its author has been carried out.

Dr. Mackinnon starts with and adheres consistently to a broad conception of liberty, which is indicated in his preface to be "the free development of man, subject of course to the limits of such development inseparable from human life." This comprehends social, economic, religious, political and intellectual freedom. He clearly recognizes, however, that liberty in this sense is the result of evolution and did not exist during the Middle Ages nor even in the Age of the Reformation except for special classes of the people. In considering its origins and development he is careful to avoid reading his modern conception of liberty into the terms and phrases used by the speakers and writers of these earlier periods.

The author is interested primarily in historical movements rather than in the development of thought, yet it must not be supposed that the latter is neglected. Reference is constantly made to the political theories which influenced the progress of events, and special chapters are devoted to the consideration of Mediæval Political Thought in Relation to Liberty, Machiavelli and More; and Political Thought

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in France as Influenced by the Struggle for Religious Liberty. Moreover, in the four chapters which deal with Reformation and Revolution in Scotland much attention is given to the political writings of the period, the greater part of the last chapter containing an analysis and discussion of Buchanan's *De Jure Regni apud Scotos*. The chapter on Mediæval Political Thought is an excellent sketch of the period. Arguments on behalf of liberty are traced to their origin in the contest between the Papacy and Empire and it is shown how the modern conceptions of "state of nature," "social contract," "sovereignty of the people," and similar ideas, had their source in mediæval political theories. The chapter on Political Thought in France is for the most part a reprint of Chapter VIII of the author's recent book on *The Growth and Decline of the French Monarchy*. His entire discussion of the growth of the conception of liberty shows a good acquaintance with the sources as well as with the modern literature of the history of political theories.

As indicated above, however, the consideration of political theories has been secondary to the account of the events and movements which have had to do with the growth of institutions and the development of liberty. Dr. Mackinnon has preferred "the rough track of actuality" to the "labyrinths of theory." The discussion of the striking movements of the period affords excellent opportunity for the lively literary style which he has exhibited in his earlier works. His manifest optimism lends added zest to the attractive and stimulating features of these volumes. The scope of his subject is broad and his treatment is general in character. In the first volume he considers the social and political progress in Mediæval Italy, France, Germany, Switzerland, The Netherlands, Spain, England and Scotland; while the second discusses the movements and struggles in the sixteenth century growing out of the Renascence and the Reformation in the lands of western and central Europe. Nearly one-third of the first volume and one-half of the second are devoted to England and Scotland, a fact which the author justifies on the ground that the struggles of this period formed the preliminary of the great battle for constitutional liberty which was fought out in these two kingdoms in the seventeenth century. This contest will constitute the subject of the next volume.

The fair and judicial tone which characterizes the work in general is somewhat modified in the chapters dealing with Constitutional

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and Social Progress in Mediæval England and Scotland. Here the author manifests that national partiality, some evidence of which was exhibited in his *Union of England and Scotland.* He resents the tendency on the part of some writers to ignore all except the Anglo-Saxon element of the population in the making of English history, but, in his criticism of the same, he appears to go to the other extreme and practically adopts Seebohm's theory of the prevalence of the manor and the exceptional character of the free village community in the early Anglo-Saxon kingdoms. He insists upon the continuity of the influence of Roman institutions in Britain and argues for the identity of the social and, in many respects, of the political organization of the Celt and Saxon.

There are a number of typographical errors and omissions in addition to the few which were discovered and noted in a slip inserted in the first volume. Moreover, while considerable license may be permitted in the spelling of proper names consistency in usage may be demanded. This has not always been observed as, for example, "Cologne" and "Köln" appear upon the same page (Vol. I, p. 140, lines 8 and 37) and three different spellings, "Marsilius," "Marsilio" and "Marsiglio" are used for the same writer (Vol. I, p. 372; Vol. II, p. 21, and Index to Vol. II).

These defects, however, are slight when compared with the many excellent qualities of the work. A select bibliography of sources accompanies each chapter and each volume has a carefully prepared index. The work as a whole promises to be an important and valuable contribution and the remaining volumes will be awaited with much interest.

ISIDOR LOEB.

*The Congress of Arts and Science, Universal Exposition, St. Louis,* 1904. Edited by HOWARD J. ROGERS, A.M., LL.D., Director of Congresses. Volume II. History of Politics and Economics, History of Law, History of Religion. (Boston and New York: Houghton, Mifflin and Company. 1906. Pp. x, 662.)

The second volume of papers read at the most notable assembly of eminent men of learning ever held in America comprises three of the six "departments" of the Division, Historical Science; the remaining departments, History of Language, History of Literature,

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and History of Art, being reserved for Vol. III. Besides the abstracts of minor papers and the bibliographies, there are thirty-six papers in all, with an average of seventeen pages. Their significance is unique, for their prevailing purpose is to explain the nature, method, and most urgent problems of the respective branches of historical science as it is thus broadly defined. Each is a living message from a man on the exploring line. Each of these representative writers, teachers, and investigators of the Old World or of the New rises from his work for a moment to tell his most intimate thought regarding his own craft. What an enlightening index to the complex chart of intellectual achievement at the dawn of the twentieth century, the eight volumes of the St. Louis Congress will form! Yet it might have been a truer guide, for on the program of the Congress, women of thought are not represented in right proportion.

The opening paper for the Division by President Woodrow Wilson on the very fitting theme of The Variety and Unity of History forcefully discusses the fundamental weakness of the existing attempts at synthesis through the coöperative plan as exemplified in Traill's *Social England*, Acton's *Cambridge Modern History*, and Winsor's *Narrative and Critical History of America*. These have "no wholesome singleness, or integrity of conception." History should be a "process of interpretation;" and true synthesis must come by means of "literary art and the conceiving imagination." Yet these factors may not be inconsistent with the coöperative method, if only the specialist be trained to take the right point of view, to perceive that synthetic interpretation is the real goal of all sound historical writing. The problem of Historical Synthesis is likewise dealt with in a brilliant paper by Prof. Charles W. Colby. In his view, while the demands of criticism may be "more urgent and exacting," utilitarian "instinct at its strongest urges the historian to do something with his facts after he has got them." Yet, contrary to the orthodox opinion "prevalent in high quarters," he need not utterly suppress his own personality. "The man who thinks himself so complete a master of historical synthesis that when he opens his lips he is declaring a verity of science, would seem, however learned and gifted, to be working on a false theory." Fustel de Coulanges might indeed so deceive himself; but in fact the work even of the most careful writers—that of Ranke, Stubbs, or Gardiner, for instance—is tinged more or less by personal feeling or opinion. Indeed, as Professor Colby suggests, why should an author

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"attempt to efface himself?" It is quite possible that historical truth may be "deepened by familiarity with Michelet, Quinet, Macaulay, or Green."

In his treatment of the "Conception and Method of History," Prof. James Harvey Robinson gives a most helpful and clarifying discussion of the relation between history and literature. Only in the field of history, he urges, is it a reproach to fail to be "interesting." Consequently, "in no other subject do purely literary ideals so constantly invade the scientific." By literary ideals is not meant clearness, order, propriety of diction, or even vigorous and effective presentation; but rather "stylistic expedients which belong to fiction and poetry, oratory and the drama, without which these would collapse and fall away into dust and ashes." Thus the scientific principle of the continuity or unity of history finds its antithesis in the harmful and "inveterate habit of dividing the past into periods, epochs, eras and ages." This is due mainly to the striving for vigorous presentation and dramatic effects. "Behind the craving for definite periods lies the literary sense rather than the scientific." To the same influence is due the emphasis placed upon the "exceptional and startling," rather than the more homely economic, social, or institutional facts upon which a true knowledge of the past life of man depends. It is high time that history should entirely emancipate itself from its long servitude to the literary tradition.

Prof. William Milligan Sloane illustrates the progress made in the "Science of History in the Nineteenth Century" by the methods and conceptions of four men—"perhaps not the greatest, but types at least of the best in four great lands"—Macaulay, Ranke, Taine and Bancroft. This choice is surprising, to say the least. The time is past when the methods and ideas of Macaulay or even those of Taine will be generally accepted as typical of the best scientific writing in their century; while it is simply astonishing that George Bancroft should be put at the head of this list, because to all which the other three possessed he "added another element, the profound conviction of God working in history;" for "his reading of 'philosophy working by example' was 'God working by example.'" Bancroft was indeed industrious, a lover of democracy, and he piously believed that the colonists, especially the New England colonists, were God's chosen people. But these characteristics were hardly enough to make him a scientific historian. His methods were vicious and he has done much

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to hinder a right understanding of the origin of the American nation. Professor Sloane is severe on Gibbon. The man who reads this "eulogist of heathen effeminacy,' this "apologist for pagan morality," "is hard pressed for time." Yet is it quite certain that Bancroft is a safer guide to the student of the rise of the United States than is Gibbon to the student of the decline and fall of Rome?

Only a passing reference can here be given to a few of the papers in this exceedingly interesting volume. The advantage of a more exhaustive study of the later Middle Ages, as compared with the earlier period, already pretty thoroughly understood, is powerfully presented by Prof. George Burton Adams. Nowhere, perhaps, has Professor Lamprecht expounded in a more convincing way his well-known theory than in his "Historical Development and Present Character of the Science of History." From the modern point of view, "history is primarily a socio-psychological science.' It "plays a double part: (1) as the basis of the practical as of the theoretical mental sciences; and (2) as stimulus to an historical method within the range of psychology." Thus history, as Lamprecht conceives it, is very closely allied to sociology, resting upon the same psychological basis. The two papers in the section on the "History of America" are especially valuable. In the "Relation of American History to Other Fields of Historical Study," Prof. Edward Gaylord Bourne luminously discusses four general questions: "What should be the attitude of the student of European history to American history? What does American history contribute to the interpretation of European history? In what ways has America affected the development of European life? and, lastly, What advantages may be derived in the United States and in Europe from a more thorough investigation and more general study of the history of Spanish America?" In particular, it is insisted, contrary to the prevalent opinion that the Spanish treatment of inferior or dependent races "compares favorably as a whole with the contemporary treatment accorded to such dependents by the English colonists." Prof. Frederick Jackson Turner's "Problems in American History" shows what a unique opportunity is afforded in the new world for "understanding the processes of social development." There one may follow the whole course of institution-building from the beginning. Within the "all-embracing problem" of the "description and explanation of the progress of this society" are contained many subordinate problems. First among

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them are the questions arising in the "complex of physiographic sections," over which the forming American people has spread. In a most convincing way, Professor Turner demonstrates how much our history would be enriched by an intelligent and many-sided study of "American sectionalism." Various other problems awaiting solution are pointed out; and the whole paper affords a vivid glimpse of a most fertile part of the vast unworked field which still invites the explorer.

The department, entitled "The History of Law" has a number of strong papers. Of special merit is Prof. Munroe Smith's treatment of the "Problems of Roman Legal History." The period of the Roman law extending from about the middle of the third century B.C. to the middle of the third century A.D. is believed to be the most important; and the method of further investigation which promises the best results is that of comparison. In particular, Professor Smith suggests a comparison with "Anglo-American legal development from the thirteenth century to the present day." There are fundamental analogies between the legal, constitutional, and political history of the Romans and that of the Anglo-American people which he discusses with much learning and originality. A new and hopeful outlook is thus given for future study that should yield abundant fruit. In his "Characteristics of the Common Law" Prof. Nathan Abbott reveals a keenness of vision which marks the thorough student of historical jurisprudence. The characteristics of the common law are affected by its source. "This source is either popular or professional. The former contributes simplicity, adaptability and progress—the latter technicality, rigidity, and conservatism. In America, law has become a practical science, and the problem of adjusting the ideals of the expert to the comprehension and needs of the common person is being worked out with the aid of the disposition of the American to favor common sense rather than abstract theory." Here is a pregnant suggestion. Will the problem be thus worked out fast enough to meet the exigencies of the present social crisis?

Many other papers by eminent specialists invite attention. In particular, it would be a pleasure to summarize the two hundred pages of the division relating to the "History of Religion;" but perforce, for want of space, the reviewer must be invidious. The volume is enriched by select bibliographies and by short biographies of the contributors.

GEORGE ELLIOTT HOWARD.

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*The Universal Congress of Lawyers and Jurists.* Official Report of the Universal Congress of Lawyers and Jurists held at St. Louis, Missouri, U. S. A., September 28, 29 and 30, 1904, under the auspices of the Universal Exposition and the American Bar Association. Edited by the Secretary of the Congress. (St. Louis: Published by the Executive Committee. 1905. Pp. xix, 423.)

It is a wise policy which has influenced the administrators of world's expositions, as we have come to know them in America, to place upon their program the assemblage of international parliaments of politics, science or religion. Though usually much broader in stated aim than in achievement, these meetings, nevertheless, promote a spirit of friendly tolerance and idealize an institution that might otherwise be infected with commercialism.

The Universal Congress of Lawyers and Jurists, held at St. Louis during the Exposition of 1904, was no exception to the rule. Convoked through the joint initiative of the American Bar Association and the Louisiana Purchase Exposition Company, its expressed objects were "the consideration of the history and efficacy of the various systems of jurisprudence and the discussion of those questions of international, municipal and maritime law which concern the welfare of all civilized nations; the hope of contributing to greater harmony in the principle and the forms of procedure upon which the law of civilized nations should be based; the bringing of lawyers and jurists from all parts of the world into contact, for the purpose of exchanging views on the principles and methods of the correct administration of justice, and the establishing of closer relations and association between members of the profession upon which the administration of justice depends."[1] These may be taken to be aims of a rather ambitious nature for a congress hastily called together, of short duration and with no official program. Needless to say, none of the projects took definite shape with the exception of the last, and probably this one has been superseded by events which have transpired since the congress met.

A resolution was passed at the congress for the organization of an international association of lawyers and jurists "that by harmonious effort they may labor efficiently for the improvement of the

[1] *Id.* p. vi.

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law and the maintenance of international peace."[2] In September of 1905, however, a much larger representation of foreign jurists met at Liége in connection with the national exposition held there, and perfected a permanent organization known as the Association Internationale des Avocats. As the American Bar Association has given its adhesion to this organization and nothing further has been done under the resolution passed at St. Louis, the project there planned seems to have been abandoned, or let us say merged in the later one.

And yet the St. Louis Congress was not without its results, for it enabled the jurists of the Anglo-Saxon sphere of influence to meet their brethren of Continental Europe and South America for an exchange of views and an exchange of information. This was timely, as a more or less well defined sentiment is discernible among those attentive to problems of international jurisprudence, in favor of a closer bond between the national systems for the administration of private justice.

Among the papers read at the congress and published in the report now before us, we find two, that of Dr. Jitta, of Amsterdam,[3] and that of Dr. Meili, of Zurich,[4] which disclose how far this movement has assumed official form in Continental Europe. Both of these jurists represented their countries at The Hague Conference on "Private International Law." The last named has amplified his views in a work recently published.[5] Both papers show considerable understanding of our own system of jurisprudence, and both agree in recommending an extension of the movement, at least along certain lines, so as to embrace Anglo-Saxon jurisdictions. In this connection, we may remember the paper read by Judge Baldwin before the American Political Science Association at its meeting in Baltimore last year, comparing the results of The Hague Conferences with those of the Montevideo Congress of 1888–89 at which treaties were arranged between some of the South American Republics.[6]

As a corollary to the question of the application of foreign law in determining private rights we have to determine the recognition to be

[2] Official Report p. 264.
[3] *Id.* p. 117.
[4] *Id.* p. 135.
[5] *International Civil and Commercial Law*, by F. Meili. Translated with additions of American and English Law, by Arthur K. Kuhn. 1905.
[6] *Proceedings of the American Political Science Association*, II, p. 73.

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given locally to a judgment rendered by a court of a foreign nation. An able contribution to the science of the topic was made at the congress by Sir William Kennedy, one of the Judges of the High Court of Justice of England. Curiously enough our system of jurisprudence here takes the more liberal stand and dispenses with the proceeding required by the laws of most other countries known as an *exequatur*. No social, economic or religious grounds would seem to be opposed to a conventional agreement regulating the conditions for extraterritorial execution, at least for judgments within the law of commerce, and yet no one will disagree with Mr. Justice Kennedy when he declares that the real obstacle to success is the necessity of getting "a legislative authority in the press of public affairs to give sufficient time and attention to a matter which is devoid of political or party interests and is too technical to create any enthusiasm in the general public."

The discussion upon the paper of Judge Fahlcrantz, of Sweden, upon the preferable method of regulating the trial of civil actions with respect to pleading and evidence developed a certain confusion of argument owing to the fact that many of the American delegates were unfamiliar with the principles underlying the systems of the Continental school. There seemed considerable doubt in the minds of some as to whether hearsay evidence was permitted in the trial of civil actions, though the absence of the hearsay rule is one of the distinguishing features of European jurisprudence. Again it must have been surprising to many to learn that "representatives of the people" are present in the trial of civil actions in the person of a *Procureur*. The concept that the state has a right to be represented in the determination of an entirely private dispute between private parties is one which Anglo-Saxon minds find it difficult to comprehend.

In the discussions dealing with public international law, however, the delegates found themselves on common ground. The paper of Mr. John W. Foster was an able *résumé* of the practice and workings of the permanent court of arbitration, but it is to be regretted that the Congress did not avail itself of the opportunity to lay down some definite program for the second conference shortly to be held at the Hague. Curiously enough the question of disarmament, which was the moving cause for the holding of the first peace congress, has been entirely omitted from the program for the second conference. As the record of proceedings of a learned body surveying the field of progress toward universal peace, it is strange that nothing is found in the

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report now before us which might be taken as a definite sentiment of jurists and lawyers assembled from the four corners of the world upon the problems which are likely to engage the official congress when it assembles for the second time. Neither was there an attempt to obtain the sense of the congress as to the protection which should be accorded to private property on the high seas in time of war. To the proposal of Mr. Finkelnburg, of St. Louis, that all property, belligerent and neutral, should be exempt when not contraband, it was urged by Mr. Moorfield Storey, of Boston, that the destruction of human life would prove less of a deterrent to warfare than the fear of property loss. No vote was taken, however. We understand that this is one of the matters which will be presented to the second Hague conference.

The officers of the Universal Congress of Lawyers and Jurists deserve commendation for the taste displayed in the publication of the Official Report. It is a handsome souvenir and valuable as an academic record of individual views, but not as evidence of a general or universal sentiment among lawyers and jurists upon any of the topics discussed.

ARTHUR K. KUHN.

*Traité de droit public international; première partie.* Par A. MÉRIGNHAC. (Paris: Librairie générale de droit et de jurisprudence. 1905. Pp. 580.)

This is the first of three volumes, which are intended to set public international law in a particular light—that of an international community of interests. Professor Mérignhac has been for a dozen years one of the leading advocates of the extension of international arbitration, both in principle and practice. He now proposes to show its scientific quality as a natural and indeed necessary consequence of the nature of the State, in a world containing many States every inhabitant of which is "a citizen of humanity." In the second part of his treatise he plans to examine international life when normal, that is, in time of peace; in the third, that life in time of war. The first is devoted to a general survey of the nature of the State as to its extrinsic relations.

The author is not always happy in his definitions. At the outset, for instance (p. 5), he tells us that national law is that "qui exerce

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son action dans les limites d'un état entre citoyens de cet état ou entre l' état et ses sujets." This ignores the primary right of a State to control the relations of all persons within its territory, whether citizens or foreigners. A State is according to him "une personnalité morale, souveraine et indépendante, reconnue comme telle dans la collectivité des états, propriétaire d'un territoire fixe et permanent, dirigeant librement, sans aucune immixtion étrangère prépondérante, sa politique intérieure ou extérieure, et capable, grâce à son organisation interne, d' assurer soit l'exercice de ses droits, soit l'exécution de ses obligations" (p. 115, cf. p. 325). But is general recognition essential to national existence? The nation must exist before any power can recognize it. That, like the acknowledgment of an illegitimate child, may confer a new status, but not a new life. Is a fixed and certain territory indispensable? If so, the United States did not exist until their northern boundaries were settled under our successive treaties with England. Is that no State which does not freely and with no preponderating force of a foreign character govern itself? Then Cuba is not a State; still less Korea. Of course, also, such a definition excludes the attribution of Statehood, not only to such a body as one of the United States, but also to the members of the German Empire (pp. 172, 201, 217).

It will be observed that in the title chosen for the book, the familiar wording *Droit international public*, is rearranged into *Droit public international*, the better to indicate, to quote the author's words, that his purpose is to set forth "la synthése du droit public dans les rapports des nations." He distinguishes sharply between "loi internationale" and "droit international." The former term covers treaties between particular nations and may at some far distant time denote a law spontaneously accepted by all nations to govern their relations and to be applied by magistrates of universal authority (p. 20). Such a law, however, would be subject to change. The "droit international" rests immutable in the conscience of the race (pp. 22, 23).

In considering (p. 73) recent movements towards international concert in matters of law, the author refers to the proceedings of the Spanish-American Congress of 1900, at Madrid, as destined to exercise a strong moral influence in binding Spain and Latin America together more closely by economic and industrial ties. Our own attempts at a closer association with our southern neighbors by the congresses

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of Washington in 1889, and Mexico in 1901, he regards as fruitless thus far, but aiming at a practical hegemony over both continents if not the "absorption de l'ensemble des républiques américaines." Against them are the controlling forces of language, religion and national characteristics (p. 427). In an earlier work, the author stated that the general arbitration treaty framed at the Washington congress had actually gone into effect. This error he now corrects (p. 477).

President Cleveland's message of 1895, in reference to the boundary dispute between Great Britain and Venezuela, he regards as a bit of American chauvinism, which was in its nature a formal violation of international law (p. 412). Our recent arrangements with Santo Domingo manifest a similar spirit of officious protection, and a tightening grip on all America (p. 422).

The author recalls attention (p. 465) to a striking instance of the settlement of an international controversy by strictly judicial methods, long preceding the conference of peace at the Hague. In 1874, a cargo of munitions of war on board a French merchantman, the *Phare*, was seized by the government of Nicaragua, and the validity of the seizure was, after long litigation, supported by the courts of that country. France protested. Nicarauga proposed that the matter should, the approval of her own Supreme Court being first obtained, be left to the final decision of the French Court of Cassation. This plan of settlement was carried out. The cause was tried and argued like any other before the Court of Cassation and in 1880, it pronounced judgment against Nicaragua for the value of the cargo with 12 per cent interest from the date of the seizure, and costs.

Professor Mérignhac mentions (p. 364) the *Consulta* of 1904, between France and Italy as marking a new approach towards the solidarity of nations. A citizen of either power who has a deposit in the savings bank department of its post-office can, if he removes to the other, have it transferred to his credit upon the books of the corresponding government office in his new home; thus, as the author says, laying down the principle of the "livret d' épargne universel."

Any book written to serve a theory lacks certain elements of proportion and completeness. On the other hand, it is apt—particularly if it come from a Frenchman—to breathe a real enthusiasm. Professor Mérignhac writes with a warmth and glow thus inspired. He has collected his material with care and used it with effect.

SIMEON E. BALDWIN.

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*Elements of Political Science.* By STEPHEN LEACOCK, Ph.D., Associate Professor of Political Science, McGill University. (Boston and New York: Houghton, Mifflin & Company. 1906. Pp. ix, 417.)

Professor Leacock's book is compounded of history, public law, political philosophy and economics. The leading facts and principles from these several fields, in so far as they relate to the nature of the State, the structure of government, and the province of government—the book being divided into these three parts—are skillfully woven together. Where the breadth is necessarily so great, it would be unfair to expect intensive treatment, the absence of which is the inevitable characteristic of a book of this kind. Yet here and there the author permits himself such treatment with results which are almost uniformly admirable.

The discussion of sovereignty, in the first third of the book, is of much interest. Accepting Professor Burgess' definition of sovereignty, he applies it in a somewhat different way. Legal sovereignty alone, in his opinion, is worthy of adoption by political science. He says: "The particular set of persons in a modern State who are invested with unlimited law-making power are a definite and findable body. The particular person, a set of persons, whose will in reality is supreme, fades upon analysis into a vague complexity." The "legal sovereignty" is acceptable because ascertainable; the "political sovereignty" unacceptable because not capable of ascertainment.

The good features of the book are numerous. One or two illustrations of the author's happy thought may be given. In speaking of the function of the political party in the United States he says: "It is possible, indeed, to look upon the singularly systematic and powerful growth of the party system in the United States as a sort of 'natural' evolution consequent upon the attempt to keep apart the powers of government, an attempt, as it were, on the part of nature to rectify an error in organic structure, a process analogous to the treating of a fractured limb." And of woman's suffrage he says: "What has happened has been negative rather than positive. Until recent times only a very small part of the men of the community had the right to vote. It is more accurate to say that the women have never been admitted than that they have been expressly excluded."

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In addition to the defects almost inseparable from such a book as this—here the elaboration of principle at the expense of fact, there of fact at the expense of principle—there appear to be some faults, though but few, of the separable variety. Of the latter class is the contention that the governor and chief State officials should be regarded as a unit and not as a plural executive. Of the former, a good illustration is found on p. 374 where the author, after having stated that the Marxian theory of surplus value is open to attack in that it attributes to labor the whole of the productive result, and does not allot a share to the machine, remarks that it is impossible to enter into the economic discussion to which this question gives occasion. Limitation in the discussion, of course, is necessary, but it is evident that it is sometimes at a price.

HAROLD M. BOWMAN.

*National Administration of the United States.* By JOHN A. FAIRLIE, Ph.D. (New York: The Macmillan Co. 1905. Pp. 274.)

*Local Government in the Counties, Towns and Villages.* By JOHN A. FAIRLIE, Ph.D. (New York: The Century Company. The American State Series. 1906. Pp. 279.)

The first of these two works is in a sense a ground breaker. It is the first attempt to describe in a systematic, detailed way the administrative mechanism of our national government. It is an account of the organization of the central administration with its nine great executive departments and their numerous subdivisions as they now stand, after more than a century of adaptation and growth. Only so much of history is introduced as is necessary to the understanding of the present system.

The tardy appearance of the first book in this field shows how badly the study of government has been neglected in America—especially government on its administrative side. In fact, the scientific study of administration did not begin until 1893, when Goodnow's *Comparative Administrative Law* appeared, dealing partly with American conditions. It was not until 1903 that the first book bearing the title of *American Administrative Law* made its appearance.

In no other single country has the work of the constructive statesman been more bold, original and fruitful in the last one hundred and

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thirty years than in America, as seen in the creation of our Federal constitutional system, the increased participation and initiative of the citizen in government, and in the organization and scope of party activity. Yet it is a deplorable fact that the inspiration toward the systematic study of our political system has come largely from Europeans. Such French, German and English publicists as De Tocqueville, Lieber and Bryce led the way. Even our leading writers today owe their start largely to their studies under German and French masters.

In the last ten or fifteen years there has been a gratifying increase of interest in political science among American students. The steady growth of the literature of the science alone shows the upward tendency very clearly. Dr. Fairlie's book is a valuable addition to this literature. It is filled with information, carefully collected, sifted and organized. The volume will be useful to the official, the student, and the citizen who wants reliable information in compact form. The bibliography and citation of cases is a good feature of the work.

The second book, entitled *Local Government in Counties, Towns and Villages*, covers more familiar ground. Embracing so vast and varied a series of institutions as rural local government in forty-five States, the treatise must of necessity be very general. The distinctive local flavor of rural government in each State is largely lost in such a work. It must be, to give unity and coherence to the whole. However, the author has done his work well within the limitations fixed.

One subject is apparently not treated in the full light of recent monographic studies. That is the nature of the southern rural local government and its development. The author makes a distinct advance over Howard's *Local Constitutional History* and the text-book men, but he does not quite bring his work abreast of all the recent monographic literature.

In tracing the evolution of rural local government in the South it should be made clear that the "parish" appeared only in the tide-water region. That is true in all the older Southern States, Virginia, North Carolina, South Carolina, Georgia and Louisiana. This region was the theater of early colonial activity where the Episcopal church, excepting in Louisiana, was the established church. The parish never appeared in the hinterland where the Scotch, Irish, German and

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the overflow population from the coast settlements held the frontier. These settlers would have none of the English established church. The revolution swept away the established church and no parishes were laid out after that date. So, in the back country the local districts were called counties. In some cases the coast parishes were erected into counties, keeping the old name.

In South Carolina the English county was introduced in 1682 but it never took root. It remained a mere name for a geographical district and was used to mark the jurisdiction of the justice's court. In 1785, through the influence of a Virginian who had migrated into the State, the Virginia county was introduced by State law, but the plan proved a failure and in 1799 the county was abolished from South Carolina, not to return until after the Civil War.

The local divisions into which the State was divided were circuit court districts and were always called "districts" by the people.

The functions of local government were carried out through commissioners and close-boards provided by the State legislature. These commissioners laid and collected taxes, built and repaired highways, bridges and fences, put up the jails and court-houses, etc. The people of the districts did not even elect the sheriff or clerk until after 1810. The legislature elected the governor, lieutenant-governor, and all other State and local officers.

The only exception to this complete centralization we find in the tide-water region where the old parishes still existed. The parish authorities took care of the poor and acted as election officers. The roads were in charge of the commissions, however.

The local government of South Carolina was so distinctly different from that of Virginia that it constituted a type of its own, as different from that of Virginia as the Virginia county system was from the New England and Middle States plans. It seems worth while to call attention in this review to this oversight. The present system of local government in South Carolina dates from reconstruction days.

Dr. Fairlie's book is an advance upon the earlier works on local government and is a valuable addition to the very able *American State Series*, edited by Professor Willoughby.

W. A. SCHAPER.

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*Selected Cases on Government and Administration.* By FRANK J. GOODNOW. (Chicago: Callahan and Company. 1906. Pp. 250.)

*Selected Cases on the Law of Officers, including Extraordinary Legal Remedies.* By FRANK J. GOODNOW. (Chicago: Callahan and Company. 1906. Pp. 709.)

These two volumes constitute a selection of cases on American administrative law. They serve, particularly, as illustrative material in connection with the same author's systemtic treatise on the *Principles of the Administrative Law of the United States.* And the *Principles and Cases* together furnish working handbooks for an important part of legal instruction, which has hitherto been inadequately treated in most law schools.

The *Cases on Government and Administration* are of special interest to the student of political science. These deal with large questions of general interest, such as the separation of powers, the powers of the President and State governors, and the legal position and powers of local corporations. Many of these topics have usually been considered as within the scope of constitutional law. And it must be admitted that the failure of the American courts and legal writers to recognize administrative law makes it difficult at times to draw the line of distinction. But Professor Goodnow's works certainly serve to draw attention to questions that usually are not fully discussed in books on constitutional law, and yet are essential to a clear understanding of our governmental system.

In the volume on the law of officers, the author deals with more technical legal questions, such as the formation of the official relation, the liability of officers, and the extraordinary legal and equitable remedies by which the judicial courts exercise control over administrative officers. But some understanding of such topics is essential to a clear knowledge of our political system; and even students of government who are not technical lawyers will find much of value in this volume also.

J. A. F.

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# NEWS AND NOTES

## Personal and Miscellaneous

P. S. REINSCH

The managing editor will welcome from readers of the Review items of news suitable for publication in the department of "News and Notes." The desire is to make this department as interesting and comprehensive as possible.

The third annual meeting of the Association was held in Providence, Rhode Island, December 26–29, 1906, under the auspices of Brown University. The meeting was in every way a most successful one. The papers read were interesting and valuable; the number of members registering their attendance considerably larger than upon any previous occasion; the various hospitalities extended of the most delightful character. The University Club opened its doors to its many comforts, and the Brown Union furnished an ideal place for social rendezvous. Wednesday evening, the committee of management of the John Carter Brown Library tendered a reception at the Brown Union to the members of all the associations holding sessions at the time in Providence. These other scientific bodies were the American Historical Association, the American Economic Association, the American Sociological Society, the New England History Teachers' Association, and the Bibliographical Society of Amercia. On Thursday, a luncheon was given to the members of these associations at the Lyman Gymnasium, by the corporation of Brown University, and from five to seven upon the same afternoon, Mrs. William B. Weeden received the members at her home. Another luncheon was tendered the Political Science Association by the Trustees of the Providence Athenæum on Friday, at the Lyman Gymnasium, and in the evening of the same day, a large smoker to all the associations was held at the Trocadero.

At the business meeting of the Association the following officers were elected for the year 1907: Hon. Frederick N. Judson of St.

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Louis, president; Prof. Albert Bushnell Hart, first vice-president; Prof. H. A. Garfield, second vice-president; Prof. Paul S. Reinsch, third vice-president. In the places of Profs. L. S. Rowe, P. S. Reinsch, G. G. Wilson, W. A. Schaper, and J. A. Woodburn, whose terms of office expired, the following members of the Executive Council were elected: Prof. A. L. Lowell of Harvard University, Prof. James T. Young of the University of Pennsylvania, Prof. Stephen Leacock of McGill University, Prof. Theodore Woolsey of Yale University, and Dr. Albert Shaw, retiring president of the Association.

Upon the invitation of the University of Wisconsin and other institutions of Madison, Wisconsin, that city was selected as the place of meeting of the Association in December, 1907.

Dr. M. V. Kovalewski has been appointed professor of public law at the University of St. Petersburg.

Dr. T. Perrin has been appointed Professor Borel's successor in the chair of public law of Neuchâtel.

Dr. P. E. Sokolowski, of the University of Moscow, has been appointed professor of Roman law at the University of Berlin. He is the author of *Die Philosophie im Privatrecht* (1902).

Prince E. Troubetzkoi has been appointed professor of the philosophy of law at the University of Moscow.

Dr. W. Lustkandl, emeritus professor of public law at Vienna, died in June, 1906.

Prof. Robert Somer plans to institute in April, 1907, a brief course on legal psychology and psychiatry at the University of Giessen.

Dr. Therese Labriola has been appointed professor of legal philosophy at the University of Sassari in Sardinia.

Otto Muehlbrecht, the prominent German publisher and bibliographer of jurisprudence and political science, died in Berlin on July 26.

Prof. Bernard Moses, of the University of California, is making a tour of the South American republics for the purpose of a detailed study of their politics. He will devote a year to this investigation.

Frederic W. Maitland, the great English authority in historical jurisprudence, died December 21, 1906. The last work from his pen was the *Life and Letters of Leslie Stephen* (1906).

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Prof. G. G. Wilson, of Brown University, will give a course of lectures on international law at Harvard University during the second half of the current academic year.

President Woodrow Wilson, of Princeton University, is to give a course of lectures on the Government of the United States, at Columbia University, during March and April of this year. Dr. Albert Shaw is giving at the same institution eight lectures on Practical Problems of American Politics. Both lecture courses are on the George Blumenthal Foundation.

Prof. S. M. Lindsay, of the University of Pennsylvania, has accepted a call to a professorship in sociology in Columbia University.

Prof. E. J. Benton, of Adelbert College, is to deliver the Albert Shaw lectures upon international law and diplomacy at the Johns Hopkins University for the year 1906-07. His subject will be Questions of International Law and Diplomacy Involved in the Spanish-American War. These lectures will later appear in book form from the Johns Hopkins University Press.

Horace E. Flack, Ph.D., has been given charge of the newly created Department of Legislative Reference of Baltimore City. His work will be similar to that which for several years has been so ably carried on by Dr. Charles McCarthy at Madison, Wis.

Mr. John Barrett, minister of the United States to Colombia, has been appointed director of the Bureau of American Republics. The functions of this bureau were materially increased by the international conference at Rio, and its organization will therefore undergo a considerable modification.

The *Harvard Law Review* for November contains a series of five articles on the career and influence of Prof. C. C. Langdell who was, for thirty-six years, professor of law at Harvard.

The College of Law of Northwestern University at Chicago began last May the publication of the *Illinois Law Review.*

A new department of political science and sociology has been established at the University of Nebraska, and Prof. George E. Howard appointed as its head professor, with L. E. Aylsworth and Guernsey Jones as assistants. Heretofore political science had been taught at the university as a department of American history, and sociology as a division of political economy.

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In Zurich there has been founded a society for the creation of a central station for social literature. The purpose of this association is the collection of the more evanescent material on the social sciences, such as pamphlets, prospectuses, annual reports, etc. Similar centers are already in existence in Paris, London, Brussels, and Frankfort.

Courses on the press and journalism have recently been introduced in many German universities. Zurich has a professorate of journalism. At Greifswald, Professor v. Wenckstern gives a course on the press. Similar courses are offered at Leipsic, Halle, and Munich. Special attention is given in many universities to the law of the press and of publications in general. Prof. J. Kohler of the University of Berlin is just publishing an extensive work on the law of copyright.

The University of Manchester has established a chair of strategy and military history.

A majority of the Rhodes scholars at Oxford from the United States and Germany pursue juristic studies.

The academic winter course just established at the city of Hamburg comprises a number of lectures by French, English, Italian and American scholars. This international interchange of professors differs from that which has already been established at other universities, in that the foreigners in this case lecture in their own language. The purpose is to give the students an opportunity to familiarize themselves with foreign languages while pursuing their regular studies. Dr. W. H. Tolman, of New York, lectures this winter on industrial reform movements in America.

Dr. Charles McCarthy, the head of the legislative reference department of the State of Wisconsin, is giving a university course on comparative and practical legislation. The membership of this class is composed of advanced students in politics and economics at the University of Wisconsin. The entire process of legislation is studied with constant reference to the actual work of a legislative body. The students assist the legislative experts in preparing the work which legislators demand. They gather general information and specific data concerning proposed topics of legislation. They make tentative drafts of bills which are debated by the class as to their general advisability. They are then discussed, section by section, with great care, with a criticism of the phraseology, and an investigation of the relation of the new provisions to the already existing law.

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This work has been exceedingly valuable in putting the students in direct touch with the practical workings of a legislature, and giving them an opportunity to apply their political and economic knowledge to the solution of concrete problems. Not only are the powers of analysis and criticism developed, but the students learn how to accomplish things by legislative means, and they learn to appreciate the natural limitations upon the feasibility of any general policy in legislative matters.

Dr. J. Franklin Jameson, director of the bureau of historical research of the Carnegie Institution at Washington, has prepared and published a list of doctoral dissertations in history and political science in preparation, December, 1906.

Dr. G. Salvadori has published a brief but suggestive study on *Das Naturrecht und der Entwicklungsgedanke* (Leipzig, Dieterich).

The last number in the series of monographs published by the seminar in jurisprudence and politics at the University of Marburg is Dr. Arthur Adler's *Die Spionage*, a valuable contribution in a field to which, thus far, little scientific attention has been given.

At the eleventh meeting of the German section of the International Criminological Union, which was held at Frankfort in September, Prof. B. Freudenthal read a paper on American criminal administration in which he called attention to recent advances in American criminology.

There is at present appearing a completely revised edition of Prof. H. Brunner's famous *Deutsche Rechtsgeschichte.*

*A Dictionary of Political Phrases and Allusions,* by H. Montgomery and P. Cambroy, has just been published (London, Sonnenschein). The book deals with the current phraseology of English politics.

Professor W. B. Munro has in press (The Macmillan Co.) a work entitled *The Government of European Cities.*

The recent work of Prof. Emory R. Johnson, entitled *Ocean and Inland Water Transportation* (Appleton & Co.) has a chapter dealing with the Government Aid and Regulation of Ocean Commerce and Transportation.

Prof. John B. Phillips has contributed to the University of Colorado Studies, a paper dealing with the educational qualifications of voters in the United States.

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In the *Pattern Nation* (London, Macmillan), Sir Henry Wrixon discusses the difficulties arising from the coexistence of political equality, and industrial and social distinctions.

The main topic of the *National Geographic Magazine* for October is Cuba. The number contains an account of the population, resources, and industries of the island. The December issue contains a valuable account of present conditions in China, by Hon. J. W. Foster.

To take the place of the now practically completed *Handbuch des öffentlichen Rechts des Gegenwart* of Marquardsen and Seydel, many of whose volumes are now considerably out of date, there is announced from the press of J. C. B. Mohr (Paul Siebeck) in Tübingen, a series of volumes under the title *Das öffentliche Recht der Gegenwart* under the editorship of Dr. George Jellinek, of the University of Heidelberg, Dr. Paul Laband, of the University of Strassburg, and Dr. Robert Piloty of the University of Würzburg. These volumes will be arranged in two series. The first series will consist of separate volumes dealing respectively with the systems of constitutional and administrative law of the chief States of the of the world, together with a consideration of the most recent theories and judicial determinations with reference to them. Appendices will give the texts of the constitutions discussed. Of this series the first volume, a new edition of Laband's *Deutsches Reichsstaatsrecht* has already appeared; and the entire series is expected to appear within the next six years. The second series will consist of *Jahrbücher des öffentlichen Rechts* which will contain notices of new treatises and essays of general scientific interest in the field of public law, references to newly enacted constitutional and administrative laws in all the principle States of the world, together with their texts when feasible, new judicial interpretations, etc. The first of these year-books is announced to appear this year, and will contain an article by Professor Laband upon the historical development of the imperial German constitution.

Professor Ernst Freund, University of Chicago, is one of the associate editors of both series.

The Special Tax Commission of Missouri appointed last summer by Governor Folk has submitted a report, exhibiting the faults of the existing system of taxation, and recommending the adoption of a constitutional amendment providing for the separation of State and local taxes and the entire discontinuance of the property tax now

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levied by the State. The Commission was composed of Frederick N. Judson, (Chairman) Herbert S. Hadley, John H. Bothwell, Isidor Loeb, W. M. Williams, and E. C. Crow.

The report of the citizenship board of the Department of State, composed of James B. Scott, solicitor for the department, Daniel Jayne Hill, formerly Assistant Secretary of State, and now minister at the Hague, and Gaillard Hunt, chief of the passport bureau, has appeared. It is published as House Document No. 326. 59th Congress, 1st session.

Governor Hughes, of New York, in his message to the legislature, favors the consolidation into one commission of the two State boards now dealing with public service corporations (railways and lighting), and the bestowal upon the commission of broad powers of inspection and control.

The recent appointments in the American diplomatic service have been based almost entirely upon the principle of promotion within the service. Among ambassadors, Henry White has been promoted from the Italian to the French embassy, Mr. Lloyd C. Griscom, formerly ambassador in Brazil, being his successor in the former position. Mr. Irving B. Dudley was promoted from the Peruvian legation to the Brazilian ambassadorship. Other changes and promotions are as follows: Mr. William C. Fox, until now director of the Bureau of American Republics, to be minister in Ecuador; Mr. Geo. W. J. Lee from the legation of Ecuador to that of Guatemala; Mr. Leslie Combs, from Guatemala to Peru; Mr. Thomas C. Dawson from the Dominican Republic to Columbia; Mr. Fenton R. McCreery, from the secretaryship of the Mexican embassy to be minister resident in Santo Domingo.

A colonial congress was held on September 5–10, in connection with the Colonial Exposition at Marseilles. Over five hundred papers were read in the twenty-seven sections of the congress. Representatives of all the interests and activities of French colonization were present. Especially interesting discussions took place on the questions of education, the relation of justice to the general administration in new colonies, the merchant marine, internal improvements, etc.

The British admiralty has just published a statement of admiralty policy, which explains the plan of the distribution of British naval forces for 1907.

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The new constitution for the Transvaal, which was recently promulgated, provides for a legislature of two chambers: A legislative assembly, composed of sixty-nine members, elected by "white male British subjects over twenty-one years age;" and a legislative council of fifteen members appointed by the governor. After four years, the legislature may pass a law providing for the election of the members of the council. Other important matters that are regulated by the constitution are labor importation and the land question. It is provided that the labor importation ordinance of 1904 shall terminate one year after the convocation of the new legislature, and that no new licenses shall be granted under it. A land settlement board is created, which is to administer the granting of crown lands to settlers. The complete text of the Transvaal Constitution may be found in the Parliamentary paper (cd. 3250) entitled *Letters Patent and Instructions Relating to the Transvaal and Swaziland Order in Council*, and in the London *Times* for December 13, 1906.

The Belgian Parliament in December, after a long and thorough debate covering all the political and consitutional aspects of colonial relations, asserted the right of Belgium to annex the Congo Free State without embarrassing conditions, such as the king had attempted to impose. A central committee of the chamber was appointed to conduct an investigation, and to propose legislative measures preparatory to annexation. Though the Parliament has not as yet definitely committed itself to the latter course, it has taken the necessary steps to secure a free hand in the matter, should it decide to act.

The Parliament of Canada has passd an amendment to the naturalization act, conferring upon persons naturalized in other parts of the British empire the right to acquire Canadian citizenship by simple application to the courts and by taking the oath of allegiance. Such persons are hereafter freed from the three years' residence requirement of the general act. It has also been suggested that the imperial conference, which meets in London in April, should take up the question of imperial citizenship.

The reception to his seat in the French Academy, in December, of M. Ribot, formerly prime minister, was the occasion of two notable political addresses. M. Ribot, in eulogizing his predecessor, the Duc d' Audriffet-Pasquier, reviewed the destinies of parliamentary and republican government in France; while M. Paul Deschanel, in

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his discourse of reception, gave a brilliant account of M. Ribot's public services and of the French political spirit. The latter, he characterized, by saying of France, "Her temperament is conservative and her imagination revolutionary, so that she has always had a weakness for revolutionaries who have repented."

The November, 1906, issue of the Annals of the American Academy of Political and Social Science is exclusively devoted to the discussion of municipal problems, and contains the following articles: Municipal Ownership as a Form of Government Control, by F. A. Cleveland; American Municipal Services from the Standpoint of the Entrepreneur, by C. L. Jones; Chicago Traction; A Study in Political Evolution, by W. E. Hotchkiss; Some Social Effects of a Reform Movement, by F. S. Edmonds; Election Reforms; the Trend Toward Democracy, by J. C. Ruppenthal; A Problem of Primaries, by J. De L. Verplanck; Municipal Accounting in Boston and Louisville, by H. S. Chase.

An interesting coöperative investigation of the Activities of the Modern City, with especial reference to the city of Providence is being carried on by members of the faculty of Brown University, and others, which, when completed will be published in book form. The following are the topics being considered, and the persons considering them: Introduction, by W. H. P. Faunce, D.D., LL.D.; Physical Characteristics, by Chas. W. Brown, A.M.; The Population, by William MacDonald, Ph.D., LL.D.; The Industry and Commerce, by William B. Weeden, A.M.; Labor Conditions, by William Kirk, Ph.D.; The Government, by James Q. Dealey, Ph.D.; The Finances, by Henry B. Gardner, Ph.D.; Educational Interests, by George G. Wilson, Ph.D.; Aesthetic Interests, by William C. Poland, Ph.D.; The Philanthropies, by Mary Conyngton, A.M.; Religious Interests, by Lester Bradner, Ph.D.

The following announcement of the William H. Baldwin prize of one hundred dollars for the best essay on a subject connected with municipal government has been issued by the National Municipal League:

For the year 1906–07, the competition will be limited to undergraduate students registered in a regular course in any college or university of the United States offering distinct instruction in municipal government.

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The prize will be awarded by judges selected by the executive committee of the League, and the name of the winner will be announced at the next annual meeting.

The League's committee on coördination of university and collegiate instruction in municipal government having selected The Relation of the Municipality to the Water Supply as the general research topic for the college year, 1906–07, it was deemed best to bring the prize essay into close relation with this subject. It was also deemed best to select a topic sufficiently general to enable each competitor to conduct investigations in the State and city with which he or she may be best acquainted. This plan will give to the inquiry its greatest educational value, and will also enable each competitor to make some contribution to a subject which is of importance to every American community

The topic which the committee regards as fulfilling these requirements and which is, therefore, offered for the year 1906–07, is, The Relation of the Municipality to the Water Supply.

Those entering the competition are expected to treat the following subdivisions:

1. When the water supply is furnished by private enterprises.
   (*a*) Conditions of franchise. (*b*) Capitalization and finance of water company. (*c*) Control of municipal authorities. (*d*) Consumption and use of meters. (*e*) Condition of supply and its relation to public health. (*f*) Plans for improvement of the supply.
2. When the water supply is furnished by public authority—municipal water works.
   (*a*) History of establishment. (*b*) Adequacy of supply. (*c*) Charges to consumers. (*d*) Consumption. (*e*) Relation of water supply to public health. (*f*) Present conditions of the works. (*g*) Profit. (*h*) Plans for improvement.

It will add to the value of the paper submitted if the questions of the cost to the company, of the service to the consumer, and the relation between actual cost to the company of rendering service and charge to the consumer for the same be considered.

Papers submitted by competitors must not exceed 10,000 words in length and must be mailed or delivered to an express company not later than March 15, 1907, addressed to the "Chairman of the Com-

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mittee of Judges, care of Clinton Rogers Woodruff, Esq., Secretary of the National Municipal League, North American Building, Philadelphia," and marked "For the William H. Baldwin Prize." Competitors will mark on each paper a *nom-de-plume* and enclose in a sealed envelope the full name, address, class and college corresponding to such *nom-de-plume*.

## International Law and Diplomacy

J. H. LATANÉ

The Intervention of the United States in Cuba has been watched with great interest at home and abroad and has met with little or no adverse criticism. As a result of the insurrectionary movement which had for its object the overthrow of President Palma's government, President Roosevelt decided on September 14 to send Secretary Taft and Assistant-Secretary of State Bacon to Havana for the purpose of attempting to reconcile the contending factions, At the same time, the President addressed a letter to Mr. Quesada. Cuban minister to the United States, in which he said: "Our intervention in Cuban affairs will only come if Cuba herself shows that she has fallen into the insurrectionary habit, that she lacks the self-restraint necessary to secure peaceful self-government and that her contending factions have plunged the country into anarchy." Secretary Taft's efforts proving unavailing, President Palma resigned. When the time for the meeting of the Congress which had been convened arrived, it was found to be impossible to command a quorum. President Palma having refused to withdraw his resignation and there being no Congress to adopt other measures for continuing the government, on September 29, Secretary Taft assumed control and proclaimed a provisional government for the restoration of order and the protection of life and property. This action was taken at the direction of President Roosevelt in accordance with the provisions of the so-called Platt amendment, which form a part of the Cuban Constitution and are also embodied in our treaty with Cuba. Secretary Taft stated in his proclamation that, "The provisional government hereby established will be maintained only long enough to restore order, peace, and public confidence, by direction of and in the name of the President of the United States, and then to hold such elections as

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may be necessary to determine on those persons upon whom the permanent government of the republic should be devolved." A body of United States troops was sent to Cuba under command of Brigadier-General Franklin Bell. On October 3, Secretary Taft was relieved of the duties of provisional governor in order that he might return to his labors in Washington, and Charles E. Magoon was appointed to take his place at Havana. In his message to Congress on December 3, the President made it perfectly clear that while the United States had no desire to annex Cuba, it was "absolutely out of the question that the island should continue independent" if the "insurrectionary habit" should become "confirmed."

Secretary Taft's report on the Cuban situation was sent to Congress December 17. He gives a full documentary account of the work of intervention and expresses the opinion that Cuba may yet be set on her feet.

THE ANTI-JAPANESE AGITATION IN CALIFORNIA. During the latter part of October the country suddenly became aware of the fact that an active anti-Japanese agitation had been in progress in California for some time. The matter was brought to a crisis on October 25 when the Japanese government, through its ambassador at Washington, formally demanded of the United States that Japanese residents of California be protected in the full enjoyment of the rights guaranteed them by the treaty of 1895. The main point of the complaint was the denial of equal school privileges to Japanese children. The school authorities of San Francisco had passed an order assigning all Japanese pupils to the so-called Oriental school provided for Mongolians. They justified this action by the statement that many grown men engaged in domestic service attended the lower grades in order to learn English and were very objectionable companions for American children. President Roosevelt asserted very emphatically that he would protect the Japanese in their treaty rights and the questions were at once raised (1) whether the right to attend the same schools with native children was a right which could be claimed under our treaty with Japan, and (2) whether the United States had the right to grant by treaty to foreigners, rights wholly within the sphere of State law. The President directed the United States District Attorney to assist the Japanese in their efforts to have their rights vindicated by the courts, and he also sent Secretary Metcalf, himself a citizen of California, to San Francisco to investigate the situation. Our treaty with Japan

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guarantees to Japanese subjects in the United States in "whatever relates to rights of residence" the same privileges, liberties, and rights as native citizens, or citizens or subjects of the most favored nation. Whether the case will be pressed in the courts or not remains to be seen. There are many intricate points of law involved, affecting both our federal system and the interpretation to be given to this particular treaty. Meanwhile, the excitement which the incident has raised has somewhat cooled down as a result of Secretary Metcalf's report. This was sent to Congress December 18, and deals with three subjects: (1) the school question, (2) the boycott against Japanese restaurants, and (3) assaults on Japanese subjects. As regards the school question, it was found that about ninety Japanese had been in attendance in the schools in San Francisco. Of these about half were over 16 years of age and could easily have been excluded from the lower grades where they were associated with younger children by the adoption of an age limit which is quite usual in most city schools. The remaining Japanese pupils were in no way objectionable and if scattered among the various schools would have averaged about one to a school. But, instead of adopting such action, the San Francisco authorities assigned all the Japanese to the Oriental school in the burnt district, so situated that it was dangerous, and, in some cases, almost impossible for the Japanese children to attend it. The affair seems to have been a part of a general agitation against the Japanese begun by the labor unions of California. These unions in California, it should be remembered, are largely dominated by foreigners.

THE ALGECIRAS TREATY, which was signed last April, was ratified by the Senate December 12, but with an important reservation. When the treaty was signed, our representatives made the following declaration: "The government of the United States, having no political interest in Morocco and no desire or purpose having animated it to take part in this conference other than to secure for all peoples the widest equality of trade and privilege with Morocco and to facilitate the institution of reforms in that country tending to insure complete cordiality of intercourse without and stability of administration within for the common good, declares that, in acquiescing in the regulations and declarations of the conference, in becoming a signatory to the general act of Algeciras and to the additional protocol, subject to ratification according to constitutional procedure, and in accepting the application of those regulations and declarations to American

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citizens and interests in Morocco, it does so without assuming obligation or responsibility for the enforcement thereof."

The Senate, however, not satisfied with this declaration, attached to the resolution of ratification the following resolution: "*Resolved further*, as part of this act of ratification, that the Senate understands that the participation of the United States in the Algeciras conference, and in the formulation and adoption of the general act and protocol which resulted therefrom, was with the sole purpose of preserving and increasing its commerce in Morocco, the protection of life, liberty and property of its citizens, residing or traveling therein, and of aiding by its friendly offices and efforts in removing friction and controversy which seemed to menace the peace between powers signatory with the United States to the treaty of 1880, all of which are on terms of amity with this government; and without purpose to depart from the traditional American foreign policy which forbids participation by the United States in the settlement of political questions which are entirely European in their scope."

THE SITUATION IN THE CONGO FREE STATE has been a leading topic in the press of Europe and America for the past two months. Early in December, a concession for the production of rubber, which had been granted by King Leopold to an American syndicate with Thomas F. Ryan at its head, was confirmed by the Belgian Parliament. About the same time, Earl Grey, British foreign secretary, made a public statement that unless the negotiations then in progress for reforms in the Congo were successful and effective, it would be the duty of Great Britain to confer with the other powers on the subject. Early in December, Senator Lodge introduced a resolution in the Senate providing for an investigation into the Congo situation by the United States. This resolution, which has been supported by memorials from various organizations and individuals in America, is now under consideration by the Senate committee on foreign relations.

THE TRIPLE ALLIANCE. The European press seems to be still uncertain as to the present status of the Triple Alliance. On November 3, it was announced at Vienna, that Baron von Aehrenthal, the new Austrian foreign minister, had taken steps to draw Italy back into the alliance. On November 14, Chancellor von Bülow, in his speech before the Reichstag, asserted that the Triple Alliance would be maintained intact, and furthermore, he denied that

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there was any feeling of animosity on the part of Germany toward the Anglo-French and the Anglo-Russian understandings. He also asserted that Germany's relations with the United States were most friendly, but that, in order to smooth our economic relations, it would be necessary to arrange a mutually beneficial agreement. In this connection it may be stated that President Roosevelt has appointed a commission to confer with German officials regarding an adjustment of our tariff relations.

On November 8, it was announced that Sir Mortimer Durand, British ambassador to the United States, would retire at the end of the year. Various reasons as to his retirement have found their way into the press, but no satisfactory or trustworthy explanation has yet been given to the public. Sir Mortimer withdrew just before the Christmas holidays. More recently, it has been announced that Mr. James Bryce, so long and favorably known in America, had been selected as his successor and his appointment pronounced by President Roosevelt entirely satisfactory to this government. Mr. Bryce's appointment will prove exceedingly popular in America. It is something of a departure from the British practice to appoint a man from outside diplomatic service to such an important post, and particularly to take him from a responsible cabinet position. Mr. Bryce believes in the principles of the new diplomacy of directness for which Mr. John Hay so conspicuously stood, and his wide-spread popularity in America will doubtless tend to strengthen the ties that are already drawing England and the United States so close together in international affairs.

On October 21, the text of the new *modus vivendi* between the United States and England regarding the Newfoundland fisheries was made public.

The second peace conference, which was to have convened at the Hague last August, was postponed at the request of the United States on account of the international American conference at Rio de Janeiro and no definite time has yet been set for its meeting. A tentative program has been proposed by Russia and the subjects enumerated are now being considered by the Powers.

The Macmillan Company have recently published an English translation of *The Hohenlohe Memoirs*, which created such a sensation in Europe and are reported to have angered the German Emperor.

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The Burrows Company of Cleveland have issued a volume, by H. B. Fuller, on *The Purchase of Florida, its History and Diplomacy.*

A volume entitled *Paix japonaise*, by Louis Aubert, has recently appeared (Librairie Armand Colin). This is a very interesting sketch of recent events in the Orient, including an account of the Portsmouth peace negotiations. It is not at all friendly to the United States, but it may serve to offset some of the extravagant claims which have been made in this country as to the success of John Hay's open-door policy.

A seventh volume has been added to The International Library of works devoted to the movement for peace and arbitration. The title of this new volume is *The Moral Damage of War*, and is by Rev. Walter Walsh, of Dundee. The Library is published for the International Union by Ginn & Co.

## Recent Important Judicial Decisions

B. F. SHAMBAUGH

Federal Tax on State Liquor Dispensers. The State liquor dispensers of South Carolina are not a necessary State agency and hence are liable to the special tax imposed by the internal revenue laws.

South Carolina v. United States, 26 Sup. Ct. 110.

Decree of Divorce. In a case where a husband deserted his wife in New York, established a domicile in Connecticut and there secured a divorce on notice by publication only, the wife not appearing in the suit, it was held that New York was not bound by the full faith and credit clause of the Federal Constitution to recognize this decision as affecting the status of the wife.

This decision is rather startling, in that, it is contrary to the holding of a majority of the State courts and the distinction seems very slight between this case and Atherton v. Atherton, 181 U. S. 155, in which the United States Supreme Court itself reached an opposite conclusion.

Haddock v. Haddock, 26 Sup. Ct. 525.

Discrimination Between Races. ("Jim Crow Cars"). An act requiring street car companies to provide separate compart-

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ments in their cars for the caucasian and ethiopian races and requiring the persons of each race to occupy their respective compartments, and providing further "that the provisions of this act shall not apply to colored nurses having the care of white children or sick white persons" is unconstitutional.

State v. Patterson (Fla.) 39, So. 398.

A similar statute in Tennessee is held constitutional as a proper police regulation not abridging the privileges and immunities of the citizen or depriving him of the equal protection of the laws.

Morrison v. State (Tenn.), 95 S. W. 494.

INHERITANCE TAX. It is held that a graduated tax on inheritances is not in conflict with the constitutional requirement that taxation shall be uniform and levied upon such property as the legislature shall prescribe, or with the provision guaranteeing due process of law.

Nunnemacher v. State (Wis.), 108 N. W. 627.

MARRIAGE OF EPILEPTICS. A statute prohibiting marriage by an epileptic is not in contravention of a constitutional provision for equality in the rights to liberty and the pursuit of happiness.

Gould v. Gould (Conn.) 61 At. 604.

DUE PROCESS OF LAW. A Pennsylvania statute providing for the administration of the property of persons absent and unheard of for seven years and presumed to be dead was held to be a valid enactment not repugnant to the fourteenth amendment as depriving the absentee of his property without due process of law.

Cunnivs, now Smith v. Reading School District, 198, U. S. 458.

A similar statute in Maryland was held unconstitutional, this case being distinguished from the above by the fact that the Pennsylvania statute made provision for the protection of the rights of the absentee should he afterward prove to be alive, which provision was not made in the Maryland statute.

Savings Bank of Baltimore v. Weeks, 64 At. 295.

PRIVILEGES OR IMMUNITIES. An Iowa statute providing for preference over others equally competent of honorably discharged soldiers and sailors of the Civil War, residents of the State, in appointment to public service violates neither the fourteenth amendment to the Federal Constitution which declares that no State shall make or enforce any law abridging the privileges or immunities of the citizens

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of the United States, nor a clause of the State Constitution forbidding the granting to any class of privileges not open to all.

Shaw v. City Council of Marshalltown (Ia.), 104 N. W. 1121.

CONTROL OF GOVERNOR BY MANDAMUS. A State statute directed the governor to approve with his own signature treasury warrants for the salaries of certain military officers. He refused to do so and the mandamus proceeding was resisted on the ground that the governor of a State is not amendable to the compulsory process of the courts.

Held, that the act required being purely ministerial, mandamus would lie to compel performance by the governor.

Cocran *et al.* v. Beckham, Governor *et al.*, 89 S. W. 262.

APPROPRIATION FOR PRIVATE PURPOSE—SUGAR BOUNTY. A Nebraska statute offering a bounty for the manufacture of sugar and chicory was held unconstitutional because of lack of power on the part of the legislature to appropriate money for such purpose.

Oxnard Beet Sugar Co. v. State, 105 N. W. 716.

PATENTED ARTICLES. A statute of Arkansas provided that every negotiable instrument taken in payment for any patented machine, implement, substance, or instrument shall be executed on a printed form showing upon its face that it was so taken, and that all negotiable instruments not so showing on their face should be absolutely void. *Held*, that such statute was unconstitutional and void as creating a discrimination between articles of property of the same class based solely on the fact that those discriminated against were protected by a United States patent.

Ozan Lumber Co. v. National Bank, Fed. 344.

The authorities are in hopeless conflict as to whether a State may impose restrictions on the sale of patent rights. As a general proposition, however, the State may impose reasonable police regulations upon the sale of certain classes of property even though patented articles may be included in the class. The above decision does not necessarily depart from this rule. It merely decides that the basis of discrimination cannot be the fact that the articles discriminated against are patented.

AUTHORITY OF A GOVERNOR TO SUE. Under a general constitutional clause requiring the governor to see that the laws are duly enforced it was held that the governor does not have authority to sue in the name of the State.

Henry v. State, 39 So. 856.

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PERSONAL LIBERTY. The general provisions of the Nebraska "Dipsomaniac law" were held constitutional but that part of the law which sought to impose conditions on the release of one who had been cured was unconstitutional as a violation of the right to personal liberty.

*Ex parte* Schwarting, 108 N. W. 125.

The United States district court for western Tennessee in December, declared unconstitutional the employers' liability law of 1906, on the ground that the liability of a common carrier to its employees for injuries, is not a part of interstate commerce. The case has been appealed.

POLICE POWER. A statute prohibiting any female from being employed, permitted, or suffered to work in any factory before 6 o'clock in the morning or after 9 o'clock in the evening of any day is not a valid exercise of police power in the interest of the health of female employees and the public welfare,.

People v. Williams, 100 N. Y. Supp. 327.

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Confederate States, Journal of Congress of the, 1861-65. 1904-06. 7 vols. *War dept.* (S. doc. 234, 58th Congress, 2d session.)

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Constitutions, American, compilation of political constitutions of independent nations of the New World, with short historical notes and appendixes. 1906. 422 pp., 8vo, v. 1. $1.00. *Bureau of American Republics.*

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[1] When prices are given, the document in question may be obtained for the amount mentioned from the Superintendent of Documents, Government Printing Office, Washington, D. C. All references are to 59th Cong. 1st sess. Where "H.R." and "S." appear alone, House bill and Senate bill respectively are meant.

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Foreign relations, Papers relating to. 1905. cxix, 1055 pp. *State dept.* (H. doc. 1.) Cloth, $1.00.

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Immigration, Report amending 4403 to amend act to regulate, so as to substitute text of H. R. 18,673. 1906. 29, 37 pp. *House of reps. Committee on immigration and naturalization.* (H. rp. 4558, 4912.)

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Virginia Company of London, Records of (1619-24). 1906. 2 vols. *Library of Congress.* Cloth, $2.00 per vol.

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## GERMANY

Jahresbericht über die Entwickelung der deutschen Schutzgebiete in Afrika und der Sudsee im Jahre 1904-05. Berlin. E. S. Mittler u. Sohn, 91, 393 pp. *Answartiges Amt.*

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